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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civil Action No. C.A. No. 04-1494 (JJF)

MAGTEN ASSET MANAGEMENT CORPORATION and
LAW DEBENTURE TRUST COMPANY OF NEW YORK,
Plaintiffs,

v.

NORTHWESTERN CORPORATION,
Defendant.

Civil Action No. C.A. No. 05-499 (JJF)

MAGTEN ASSET MANAGEMENT CORP.,
Plaintiff,

v.

MICHAEL J. HANSON and ERNIE J. KINDT,
Defendants.

DEPOSITION OF
ERIC JACOBSEN

TAKEN ON: 6/19/2007

BY: DANA ANDERSON

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<p>1 APPEARANCES:</p> <p>2 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP</p> <p>3 One New York Plaza</p> <p>4 New York, New York 10004-1980</p> <p>5 By: Bonnie Steingart, Esq.</p> <p>6 Sabita Krishnan, Esq.</p> <p>7</p> <p>8 For the Plaintiffs</p> <p>9</p> <p>10 CURTIS, MALLET-PREVOST, COLT & MOSLE LLP</p> <p>11 101 Park Avenue</p> <p>12 New York, New York 10178-0061</p> <p>13 By: Joseph Pizzuro, Esq.</p> <p>14 Nancy E. Delaney, Esq.</p> <p>15 For NorthWestern Corporation</p> <p>16</p> <p>17 WILMER, CUTLER, PICKERING, HALE & DORR</p> <p>18 1875 Pennsylvania Avenue, NW</p> <p>19 Washington, DC 20006</p> <p>20 By: Joseph K. Brenner, Esq.</p> <p>21 For the Witness</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2 Examination by Ms. Steingart, page 8</p> <p>3</p> <p>4 INDEX OF EXHIBITS</p> <p>5 Exhibit Number 1, Stipulated Protective Order,</p> <p>6 page 7</p> <p>7</p> <p>8 Exhibit Number 2, NorthWestern Corporation Staff</p> <p>9 Meeting/Executive Committee Meeting Minutes, January</p> <p>10 28, 2002, page 14</p> <p>11</p> <p>12 Exhibit Number 3, February 25, 2002 E-mail from</p> <p>13 Barbara Forinash to Karen Smook with NOR Staff/Exec</p> <p>14 Committee Materials attachments, page 15</p> <p>15</p> <p>16 Exhibit Number 4, Management Financial and</p> <p>17 Information Report Meeting 2002 Calendar, page 16</p> <p>18 Exhibit Number 5, January 28, 2002 Memorandum from</p> <p>19 Mike Hanson and Eric Jacobsen to The Board of</p> <p>20 Directors regarding Update on Montana Power</p> <p>21 Acquisition, page 20</p> <p>22</p> <p>23 Exhibit Number 6, March 18, 2002 Confidential</p> <p>24 Memorandum from Eric Jacobsen and Mike Hanson to</p> <p>25 Merle Lewis, Dick Hylland and John Van Camp</p> <p>regarding MPC Compensation Proposal, page 27</p> <p>Exhibit Number 7, May 28, 2002 Memorandum from Kipp</p> <p>Orne to Merle Lewis, Dick Hylland and Eric Jacobsen</p> <p>regarding Financing Plans and Considerations,</p> <p>page 39</p> <p>Exhibit Number 8, Form 10-Q, NorthWestern Corp,</p> <p>dated May 15, 2002, page 47</p> <p>Exhibit Number 9, July 3, 2002 E-mail from Karen</p> <p>Smook to multiple recipients regarding 05-31-02 For</p> <p>The Month Ended, page 51</p> <p>Exhibit Number 10, NorthWestern Management Financial</p> <p>and Information Report For The Month Ended May 31,</p> <p>2002, page 52</p>
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<p>1 APPEARANCES (continued):</p> <p>2 BROWNING, KALECZYC, BERRY & HOVEN, PC</p> <p>3 139 North Last Chance Gulch</p> <p>4 Helena, MT 59624</p> <p>5 By: Stanley Kaleczyc, Esq.</p> <p>6 Kimberly A. Beatty, Esq.</p> <p>7</p> <p>8 For Michael J. Hanson and Emie J. Kindt</p> <p>9</p> <p>10 NIXON PEABODY, LLP</p> <p>11 437 Madison Avenue</p> <p>12 New York, NY 10022-7039</p> <p>13 By: Christopher M. Desiderio, Esq.</p> <p>14</p> <p>15 For Law Debenture Trust Company of New York</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX OF EXHIBITS (continued)</p> <p>2 Exhibit Number 11, NorthWestern Management Financial</p> <p>3 and Information Report For The Month Ended June 30,</p> <p>4 2002, page 55</p> <p>5 Exhibit Number 12, Form 10-Q, NorthWestern Corp,</p> <p>6 dated August 14, 2002, page 57</p> <p>7</p> <p>8 Exhibit Number 13, July 9, 2002 Confidential</p> <p>9 Memorandum from Eric Jacobsen and Mike Hanson to</p> <p>10 Merle Lewis, Dick Hylland and John Van Camp</p> <p>11 regarding NorthWestern Energy LTP, page 65</p> <p>12 Exhibit Number 14, July 30, 2002 Memorandum from</p> <p>13 Mike Hanson to The Board of Directors regarding</p> <p>14 Update on NorthWestern Energy Integration, page 69</p> <p>15 Exhibit Number 15, July 31, 2002 Memorandum from</p> <p>16 Eric Jacobsen to NorthWestern Board of Directors</p> <p>17 regarding Going Flat Resolution, page 77</p> <p>18 Exhibit Number 16, NorthWestern Management Financial</p> <p>19 and Information Report For The Month Ended July 31,</p> <p>20 2002, page 83</p> <p>21 Exhibit Number 17, August 16, 2002 Letter from</p> <p>22 William Schwitzer to Stephen Hearn and Fred Frank,</p> <p>23 page 89</p> <p>24 Exhibit Number 18, September 6, 2002 Letter from</p> <p>25 William Schwitzer to Stephen Hearn and Fred Frank,</p> <p>page 94</p> <p>Exhibit Number 19, November 8, 2002 Memorandum from</p> <p>Eric Jacobsen, Kipp Orne to The Members of the</p> <p>Disclosure Committee and each Disclosure</p> <p>Sub-Committee, page 120</p> <p>Exhibit Number 20, November 12, 2002 E-mail from Tim</p> <p>Atkinson to Kurt Whitesel, Kipp Orne and Eric</p> <p>Jacobsen with attached Memorandum, page 120</p> <p>Exhibit Number 21, October 30, 2002 Memorandum from</p> <p>Kipp Orne to NorthWestern Board of Directors</p> <p>regarding Revised Proposed 2003 Operating Plan,</p> <p>page 130</p>

<p style="text-align: right;">Page 78</p> <p>1 A. I don't have specific recollections of that, 2 no. 3 Q. In any case, the board at the meeting in August 4 voted on resolutions concerning the going-flat 5 transaction, correct? 6 A. I believe that's correct. 7 Q. Did you draft the resolutions? 8 A. I believe they were prepared by outside 9 counsel. 10 Q. Did you review them before they were presented 11 to the boards? 12 A. I would assume that I did. I don't have a 13 specific recollection. 14 Q. Have you had a chance to look at that part of 15 the minutes, and it begins on page 00145? 16 A. There's two different numbers, okay. 17 Q. Do I have the wrong number? 18 A. We were using NOR numbers, now -- 19 Q. I'm sorry. NOR 9570. 20 A. Okay. Here. (Reviews document.) 21 Q. Do you see the first whereas, it says "Whereas 22 NorthWestern Corporation believes it advisable 23 for rating agency purposes to move the assets." 24 Do you see that? 25 A. Yes, I do.</p>	<p style="text-align: right;">Page 80</p> <p>1 acquire assets. It's my recollection that we 2 then had to seek approval to be in that holding 3 company structure. And as I testified earlier, 4 it was our belief that that structure was not 5 compatible with NorthWestern's business plan. 6 And so we had requested authority to go ahead 7 and close on that basis but then transition to 8 a flat structure so that we would not be forced 9 to become a registered holding company. 10 Q. Now, was there any requirement that this occur 11 at or around November of 2002? 12 A. It's my recollection that we had a year or so. 13 But I don't have a specific recollection. 14 Q. Now, at the time that you received permission 15 to do this from the Montana Public Service 16 Commission, was the Montana Public Service 17 Commission provided with updated financial 18 reporting concerning the advances to Expanets? 19 A. It's my recollection that the approval from the 20 Montana Public Service Commission was given as 21 part of the original approval of the 22 transaction which was in, I believe, January of 23 2002. 24 Q. And after that initial approval was sought and 25 obtained, was updated financial information</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Why was it advisable for rating agency purposes 2 to move the assets? 3 A. I don't recall. 4 Q. Was there any discussion of that with the 5 board? 6 A. I don't recall. 7 Q. As you sit here today and review the resolution 8 that was presented to the board, is it your 9 understanding that this is the rationale that 10 the board used in approving the going-flat 11 transaction? 12 A. No. My recollection is that in the very late 13 stages of the acquisition process, Montana 14 Power or Touch America made a change in the 15 structure of their own entity and dropped all 16 of their utility assets into an LLC, a limited 17 liability company. It changed our acquisition 18 from that of assets to the interest in this 19 LLC, so the transaction changed in the last 20 days, month or so, I can't recall the exact 21 timing of that. 22 That resulted in us, after 23 consummating the acquisition, being in a 24 holding company structure which was not the 25 original plan. The original plan was to</p>	<p style="text-align: right;">Page 81</p> <p>1 concerning the liquidity of NorthWestern 2 provided to Montana Public Service Commission? 3 A. I don't recall. 4 Q. There were a series of board meetings in 5 September of 2002, correct? 6 A. I believe so. 7 Q. And those series of board meetings concerned 8 the difficulties that NorthWestern was having 9 in raising additional capital, correct? 10 A. I would have to look at the agendas to see all 11 the items that were discussed. Financing would 12 typically be something that the board discussed 13 at every meeting. 14 Q. In September of 2002, did anyone update the 15 Montana Public Service Commission about the 16 issues that NorthWestern was facing concerning 17 liquidity? 18 A. I don't recall. 19 Q. Did anyone update the Montana Public Service 20 Commission about the risks that would be posed 21 to the utility company assets if they were 22 owned directly by NorthWestern? 23 MR. PIZZURRO: Objection. 24 THE WITNESS: I don't recall. 25 BY MS. STEINGART:</p>

21 (Pages 78 to 81)

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1 Q. Now, when you presented this resolution to the
2 board of directors concerning the going-flat
3 transaction, was there any financial analysis
4 presented with respect to the assets and
5 liabilities being transferred in connection
6 with the going-flat transaction?
7 A. I don't recall.
8 Q. Was the board of directors informed about the
9 value of the assets and the value of the
10 liabilities being transferred in connection
11 with the going-flat transaction?
12 A. I don't recall.
13 Q. Was there any discussion about whether
14 NorthWestern could pay the liabilities being
15 assumed from the Montana Power Company in
16 connection with the going-flat transaction?
17 A. I don't remember any such discussions.
18 Q. So at the time the board approved the
19 going-flat transaction, the board talked about
20 the advisability for rating agency purposes of
21 transferring the assets but did not discuss
22 NorthWestern's ability to make payment on
23 Montana Power Company liabilities, correct?
24 MR. BRENNER: Object to the form.
25 MR. PIZZURRO: Objection.

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1 increasing?
2 A. I don't recall.
3 Q. And was it also your understanding that these
4 predictions of Expanets' ability to repay were
5 also becoming gloomier?
6 A. I see that the forecast as indicated here is
7 changing. It is still prospective.
8 Q. Now, at some point in 2002 you learned that
9 Expanets would not repay any of the monies that
10 were advanced to it during 2002, correct?
11 A. I believe late in the year that become more
12 clear, yes.
13 Q. Did anyone, after receiving the MFIR for July,
14 either during the operational meetings or any
15 other meetings, discuss the connection between
16 Expanets' continued cash flow problems, its
17 borrowings and the Expert system?
18 A. I don't recall.
19 Q. Did anyone discuss at any of these operational
20 meetings that you attended the increasing
21 liquidity pressures that Expanets was creating
22 for NorthWestern?
23 A. I did not attend the -- what I understand to be
24 the operating meetings which were the
25 subsidiary specific meetings. The meetings to

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1 THE WITNESS: I don't recall.
2 (Deposition Exhibit Number 16 marked
3 for identification.)
4 BY MS. STEINGART:
5 Q. Sir, do you recognize this to be the
6 NorthWestern MFIR for July 2002?
7 A. (Reviews document.) It appears to be that,
8 yes.
9 Q. And you received this in the course of your
10 employment at NorthWestern?
11 A. I would assume that I did.
12 Q. I'd like to direct your attention to page 9
13 of 14 or NOR 362075.
14 A. (Reviews document.)
15 Q. And I'll ask you to look at the paragraph at
16 the bottom of the page that begins with "Cash
17 collections..."
18 A. All right.
19 Q. And was it your understanding at the end of
20 July 2002 that 100 percent of the customers
21 would not receive accurate bills until October?
22 A. I see that's what's indicated here in the
23 report.
24 Q. Was it your understanding that the incremental
25 borrowings had or were -- had and were

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1 discuss these MFIRs, I did participate in. And
2 I believe that it's my recollection that
3 somewhere in this report is a liquidity report
4 that's on NOR 362079, I believe.
5 And so that information, I believe,
6 was a standard portion of these reports.
7 Q. Now, is the number there that's listed for
8 Montana First Megawatts a cash availability or
9 a cash need?
10 A. I don't know where you are on this report.
11 Q. I'm looking at the page that you referenced and
12 the line concerning Montana First Megawatts.
13 MR. BRENNER: Under the heading
14 Potential Cash --
15 THE WITNESS: Oh, I see it now. I see
16 it now.
17 BY MS. STEINGART:
18 Q. Yes. So was the company going to have some
19 payment obligation with respect to MFM?
20 A. It appears to be unclear at this point if I
21 read the footnote.
22 Q. Now, during 2002 NorthWestern was not able to
23 sell MFM, was it?
24 A. I don't recall when the actual assets were
25 sold.

22 (Pages 82 to 85)

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1 Q. There is future cash needs that are noted for
 2 Expanets.
 3 Do you see that?
 4 A. Yes.
 5 Q. Expanets working capital, I think it's
 6 25 million?
 7 A. Yes.
 8 Q. Did NorthWestern advance an additional
 9 25 million to Expanets?
 10 A. I don't recall the -- I do recall that the
 11 AVAYA credit agreement was restructured, and it
 12 ultimately -- resolution of the relationship
 13 with AVAYA was negotiated. I do not recall
 14 whether this specific advance was made or not.
 15 Q. Now, it says "Funds availability."
 16 Do you see that?
 17 A. Yes.
 18 Q. And facilities?
 19 A. Yes.
 20 Q. And it says "Expanets." And is that 80
 21 million?
 22 A. It appears to be, yes.
 23 Q. And did NorthWestern ever receive that
 24 \$80 million?
 25 A. I don't know.

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1 to pay part of that down, correct?
 2 A. It was extended and renegotiated.
 3 Q. And how much did that cost? How much did it
 4 cost to extend it and renegotiate it?
 5 A. In terms of expenses of lawyers to do it?
 6 Q. Or to redo the facility, in fees and expenses.
 7 A. I don't recall any fee being charged by them to
 8 do it at all.
 9 Q. And was that part of an overall negotiation
 10 with AVAYA?
 11 A. There were ongoing negotiations with them over
 12 various matters, yes.
 13 Q. And was any other new lender other than AVAYA
 14 willing to provide any money to Expanets?
 15 A. Not that I recall.
 16 Q. Was AVAYA willing to provide enough so that
 17 Expanets could repay NorthWestern \$80 million?
 18 A. I don't recall. I don't believe so.
 19 Q. And AVAYA wasn't even asked to do that, were
 20 they?
 21 A. Not that I'm aware.
 22 Q. They were just asked to roll over the amount
 23 that was outstanding at that time, is that
 24 correct?
 25 A. I believe that's correct.

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1 Q. And then do you know what that number is based
 2 on?
 3 A. No, I don't.
 4 Q. Now, the chart that we were looking at before
 5 on page 9 talks about there being \$160 million
 6 in borrowings by Expanets from NorthWestern.
 7 Do you see that?
 8 A. (Reviews document.) That appears to be a
 9 forecasted number.
 10 Q. Did that number get even higher than that?
 11 A. I don't know.
 12 Q. Did anyone discuss in connection with this MFIR
 13 and the liquidity section that you've
 14 referenced us to, did anyone ask where Expanets
 15 was getting the 80 million?
 16 A. I don't recall.
 17 Q. Do you know of any lender at the end of
 18 July 2002 or August 2002 who was willing to
 19 lend Expanets any money whatsoever?
 20 A. AVAYA.
 21 Q. Did AVAYA lend the money?
 22 A. AVAYA had an existing credit agreement which
 23 stayed outstanding.
 24 Q. Other than the AVAYA existing agreement -- and
 25 this liquidity analysis shows there is a need

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1 Q. Are you aware of whether additional new money
 2 was sought for Expanets during August and
 3 September?
 4 A. I generally recall that Expanets was looking to
 5 obtain financing to replace the AVAYA facility
 6 which had a maturity date.
 7 Q. Were they looking to obtain any financing to
 8 repay NorthWestern?
 9 A. I don't remember.
 10 (Deposition Exhibit Number 17 marked
 11 for identification.)
 12 BY MS. STEINGART:
 13 Q. We'll do this document then we'll break for
 14 lunch.
 15 MS. STEINGART: You have a call, don't
 16 you?
 17 MR. BRENNER: I'm flexible so we can
 18 break whenever you want to.
 19 BY MS. STEINGART:
 20 Q. Have you seen Jacobsen 17 before?
 21 A. (Reviews document.) I believe I have.
 22 Q. And what do you understand this to be?
 23 A. It appears to be NorthWestern's response to SEC
 24 comments in connection with the S-4
 25 registration statement that was filed.

23 (Pages 86 to 89)

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1 Q. And D is the sale leaseback of assets, what's
2 that?
3 A. I'm not sure.
4 Q. Did the board specify whether one or two or all
5 of these items were necessary.
6 A. I don't recall that.
7 Q. Were management directed to pursue all of them?
8 A. It appears that the instruction was to continue
9 to explore them.
10 Q. Now, let's look at cost savings. Were steps
11 taken to sell the plane?
12 A. I don't recall.
13 Q. Was there more than one plane?
14 A. I believe there were two.
15 Q. So one was being kept and one was being sold?
16 A. I don't know. One was a jet and one was a prop
17 plane.
18 Q. Were steps taken to reduce corporate events and
19 contributions?
20 A. I don't know.
21 Q. Were steps taken to reduce corporate personnel?
22 A. I don't recall.
23 Q. Were senior management compensation plans
24 reduced?
25 A. I don't recall.

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1 developed with respect to Expanets?
2 A. I don't have a specific recollection. I
3 believe it was a pretty open-ended assignment
4 to consider all available opportunities from
5 sale to partnership to continued investment.
6 Q. Are you aware -- strike that.
7 During the years that you were at
8 NorthWestern, had any directives such as this
9 (indicating) been imposed by the board on
10 management?
11 A. Not in writing. Many times instructions were
12 given, but not in writing in this type of
13 presentation.
14 Q. Why do you think this was done in writing in
15 this kind of presentation?
16 A. I don't know.
17 Q. Do you think Mr. Drook and the board had
18 concerns about the stability of NorthWestern?
19 A. I don't know.
20 Q. Do you think Mr. Drook and the board had
21 concerns about the options of NorthWestern
22 going forward?
23 A. I don't know.
24 Q. In this period immediately before the closing
25 of the going-flat transaction, were these

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1 Q. And do you recall what other items were
2 identified in the board materials on the 5th
3 and the 6th?
4 A. No, I do not.
5 Q. Did you consider nothing as sacred?
6 A. Is that a trick question?
7 Q. Well --
8 A. I see that Mr. Drook has used that term, "I
9 hold many things sacred."
10 Q. That's right. So did you or other members of
11 management add items, cost-saving items to the
12 list pursuing the directive that, quote,
13 Nothing is sacred, close quote?
14 A. I don't recall.
15 Q. Is it fair to say that Mr. Drook had a sense of
16 urgency about these measures?
17 A. That would seem to be indicated by the
18 document.
19 Q. Number 8 talks about Expanets. And
20 prepare -- says "Prepare an evaluation of
21 strategic alternatives involving Expanets no
22 later than the next board meeting."
23 Do you see that?
24 A. Yes, I do.
25 Q. Do you recall what strategic alternatives were

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1 liquidity concerns and the urgency to raise
2 capital disclosed to the Montana Public Service
3 Commission?
4 A. I don't know.
5 Q. Did the Montana Public Service Commission know
6 that the assets of the Montana utility would be
7 used to raise capital to benefit the
8 non-utility assets?
9 MR. KALECZYC: Objection.
10 THE WITNESS: I don't know. They knew
11 that the acquisition debt was maturing
12 because they had seen that debt when it was
13 originally put in place and were familiar
14 with the maturity dates. I don't know -- I
15 don't know if they knew at this particular
16 time.
17 BY MS. STEINGART:
18 Q. And part of the cash flow needs of NorthWestern
19 at this particular time was not only because of
20 the acquisition debt but was because of the
21 hundreds of millions of dollars being spent on
22 the non-utility assets, correct?
23 A. I'm not sure of that statement. The primary
24 focus was the maturity of the debt. At this
25 time of year you are moving into the most

37 (Pages 142 to 145)

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1 sizable season for an energy company. And
2 actually cash flows are higher during this and
3 the next several months than they are at any
4 other time during the year. So a significant
5 amount of cash was being generated from a cash
6 flow standpoint.

7 So I believe the real target was the
8 fact that there was maturing debt obligations.

9 Q. There was a cash flow issue because there was
10 \$190 million advanced to Expanets, correct?

11 MR. PIZZURRO: Objection.

12 THE WITNESS: That cash had already
13 been advanced prior to moving into this
14 seasonal area which would be the highest
15 cash flow period of the company.

16 BY MS. STEINGART:

17 Q. During the highest cash flow period of the
18 company, Mr. Drook told you that nothing was
19 sacred, didn't he?

20 A. He has indicated that in this letter.

21 Q. So he had concerns about liquidity in addition
22 to cash flow, didn't he?

23 MR. PIZZURRO: Objection.

24 THE WITNESS: I'm not sure that
25 follows directly from this so much as it's

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1 modeling of the NorthWestern enterprise that
2 the creditors would look at.

3 Q. But the lender who was providing this financing
4 was going to be senior to the indebtedness that
5 was being transferred with the assets from
6 Montana Power, correct?

7 A. I believe that's correct.

8 Q. And the assets of Montana Power were going to
9 be used to secure that indebtedness, correct?

10 A. Together with other assets.

11 Q. Together with other assets.

12 So by the time that this lender was
13 paid, there wouldn't be much for other
14 indebtedness, would there be?

15 MR. PIZZURRO: Objection.

16 THE WITNESS: You can't tell that,
17 there could be plenty.

18 BY MS. STEINGART:

19 Q. But there wasn't, was there?

20 A. I believe that's not true. I don't know. I
21 think that most of these -- I don't know what
22 the ultimate payout or return was for
23 creditors, and I believe your client, the issue
24 is still open.

25 Q. Right. And so as far as you know the QUIPS

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1 an instruction to be very clinical and
2 objective in the assignment.

3 BY MS. STEINGART:

4 Q. What impact did the advance of \$190 million to
5 Expanets have on NorthWestern's financial
6 situation on November 15, 2002?

7 A. That money had already been advanced and so the
8 most telling impact was the interest cost that
9 NorthWestern had to the extent that any funds
10 advanced came from credit arrangements. I
11 believe some of it came from cash flow and that
12 wouldn't have an interest component.

13 Q. And on November 15, 2002 what was the prospect
14 that Expanets was going to repay the
15 \$190 million?

16 A. I don't know.

17 Q. As NorthWestern was adding indebtedness at the
18 level of NorthWestern, what assessment was done
19 of the cash flow available to pay for not only
20 the new indebtedness but the liabilities being
21 assumed from the going-flat?

22 A. Well, in every financing, the overall
23 obligations of NorthWestern were considered by
24 the lenders, sometimes there would be covenants
25 addressing those. So it was part of the

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1 weren't repaid, were they?

2 A. I don't know.

3 Q. And if not for the going-flat, those assets
4 would have stayed at Montana Power Company,
5 correct?

6 MR. KALECZYC: Objection.

7 THE WITNESS: There is no guarantee in
8 how those assets would have been treated
9 because had NorthWestern not done it at the
10 going-flat transaction, it might have put
11 additional debt at that subsidiary level
12 and issued secured bonds on the Montana
13 assets. And then did separate secured
14 bonds on Nebraska and South Dakota, didn't
15 have to do it all at one level, you could
16 do it at each of the individual levels,
17 more complex, more work, same result.

18 BY MS. STEINGART:

19 Q. But that's not what happened?

20 A. No, that's not what happened.

21 Q. Now, was there any discussion of getting a
22 fairness opinion with respect to the going-flat
23 transaction?

24 A. Not that I recall.

25 Q. Was there any assessment done of the assets

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1 received and the liabilities assumed?
 2 A. Not that I recall.
 3 Q. Was there a valuation performed in order to
 4 obtain financing by NorthWestern? Was a
 5 valuation done of the assets of the Montana
 6 Power Company that NorthWestern used to obtain
 7 financing?
 8 A. If the question is in connection with the
 9 financing that was done in February of 2003,
 10 there was a review by the creditors of the
 11 assets, the answer to that would be yes.
 12 (Deposition Exhibit Number 23 marked
 13 for identification.)
 14 BY MS. STEINGART:
 15 Q. After the 11/15 directive, there was additional
 16 information that Expanets was not going to meet
 17 its lowered earnings expectations, correct?
 18 A. Yes.
 19 Q. So the news that was given to the board in the
 20 October 30th memo we just looked at was updated
 21 on November 21st, correct?
 22 A. Sometime in late November, yes.
 23 Q. So we had the October 30th earnings memo. We
 24 had the -- then you had meetings with respect
 25 to the third quarter 10-Q, correct?

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1 A. Yes.
 2 Q. And also during that period of time you had the
 3 directive from the board that money needed to
 4 be raised and nothing was sacred, correct?
 5 A. Yes.
 6 Q. Then you received the 11/21 memo from Kipp
 7 Orme, right?
 8 A. (Reviews document.) Yes.
 9 Q. At this point did you or anyone else ask
 10 Kipp Orme about why these facts should be
 11 communicated days after the third quarter 10-Q
 12 was filed?
 13 A. Yes.
 14 Q. Who did you ask about that?
 15 A. I asked Kipp about starting a process to
 16 immediately advise our audit committee to
 17 examine and had the audit committee begin to
 18 look into the issues and ask questions as well
 19 as it seemed incredibly surprising that we
 20 could have an information delta or difference
 21 of this sort so soon after we had filed a 10-Q.
 22 Q. And how long did you receive this information
 23 after the going-flat transaction?
 24 A. I don't know when the going-flat transaction
 25 closed.

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1 Q. Did it close immediately before this?
 2 A. I don't know.
 3 Q. Did anyone ask why this information was
 4 provided at a point in time that it could not
 5 be taken into account in connection with the
 6 going-flat transaction?
 7 A. I think it was provided by Expanets. They
 8 seemed to have made some determination after
 9 continuing to review their numbers and it was a
 10 complete surprise.
 11 Q. It was a complete surprise to Expanets?
 12 A. To NorthWestern -- to me.
 13 Q. What explanation did you receive from those you
 14 asked at Expanets about why this came on
 15 November 21st?
 16 A. Again, we instituted -- I instituted a process
 17 to advise the audit committee and the audit
 18 committee had, I believe, Rick Fresia and
 19 John Charters participate in preparation of
 20 materials and answer questions to try to
 21 explain what was happening. And I believe some
 22 of their explanation is embodied in this
 23 (indicating) e-mail, but I believe there was
 24 additional information prepared for the audit
 25 committee.

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1 Q. Did anyone suggest in words or substance that
 2 the process was being manipulated?
 3 A. I don't recall that.
 4 Q. Did the board or others at NorthWestern
 5 determine that they had been misled?
 6 A. At the time I did not have that understanding.
 7 Q. Given the amount and the consistency of the bad
 8 news that came from Expanets during 2002, could
 9 people say on a basic level that they were
 10 really surprised about this?
 11 MR. PIZZURRO: Objection.
 12 BY MS. STEINGART:
 13 Q. Well -- I mean, could --
 14 A. I believe that, at least myself, I believe that
 15 I was very surprised at this answer and was
 16 beginning to have questions about the
 17 competence of the people at Expanets. I can't
 18 testify as to Kipp Orme, Dick Hylland's, other
 19 people's view on whether they were surprised or
 20 not.
 21 Q. Do people think that it was just a coincidence
 22 that the bad news from Expanets emerged after
 23 the close of the equity offering, the
 24 \$720 million bond registration and the
 25 going-flat transaction?

39 (Pages 150 to 153)

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1 MR. PIZZURRO: Objection.

2 THE WITNESS: That's a broad question
3 with several aspects to it. The bond
4 registration, that money was already out
5 and it was just merely an exchange. So
6 that financing had been already done and it
7 was merely an exchange of one instrument
8 for another. So that wasn't new money that
9 came as a result of that transaction. This
10 happened well after the equity offering, a
11 couple of months, I guess, and there was
12 never any discussion of manipulation, it
13 was a complete surprise on my part.

14 BY MS. STEINGART:

15 Q. It wasn't a couple of months after the equity
16 offering, it was right on the heels of the
17 equity offering, wasn't it?

18 A. This was late November and the equity offering
19 was the first couple days of October, so that's
20 closer to two months rather than right on the
21 heels.

22 Q. In connection with the equity offering, didn't
23 NorthWestern make the representation in the
24 underwriting agreement that the rating would
25 not be lowered during -- prior to the offering,

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1 Expanets in relation to these other capital
2 events that I've just listed?

3 A. It's my recollection that the board -- as I was
4 very surprised by this, and I believe at some
5 point there was a discussion of was there
6 potential liability with respect to the equity
7 offering.

8 Q. But no one considered what the potential
9 exposure would be with respect to going flat,
10 correct?

11 A. I don't recall.

12 Q. How did the 11/21 memo impact the activities
13 that you were undertaking in connection with
14 the 11/15 board directive, if at all?

15 A. I'm not sure -- I mean, we continued to -- I
16 believe that the management team continued to
17 work on those instructions. The receipt of
18 this information initiated another and separate
19 process by the audit committee to try to
20 understand what was behind this new
21 information.

22 (Deposition Exhibit Number 24 marked
23 for identification.)

24 BY MS. STEINGART:

25 Q. I'd like to show you what we've marked as

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1 correct?

2 A. (No response.)

3 Q. We looked at that together, do you recall?

4 A. That is not what it said. It said that the
5 rating -- maintenance of the rating was a
6 condition of the financing. NorthWestern did
7 not make a representation that the rating
8 wouldn't be changed. Those are different
9 things.

10 Q. So if the rating changed prior to the equity
11 offering then the underwriter could have walked
12 away, correct?

13 A. They would have that election, they may or may
14 not have walked away.

15 Q. So to the extent NorthWestern wanted to close
16 on the equity offering, it was important for
17 the rating not to change, correct?

18 A. That's one factor, yes.

19 Q. Do you think Mr. Hylland knew that?

20 A. Knew what?

21 Q. That it was important for the rating not to
22 change in order to close the equity offering?

23 A. I don't know.

24 Q. Did the board, to your knowledge, discuss the
25 substance of the timing of the disclosures by

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1 Jacobsen 24.

2 A. (Reviews document.) All right.

3 Q. Did you see this memo written by Mr. Lewis and
4 Mr. Hylland to the board of directors on or
5 around December 7, 2002?

6 A. I don't have a specific recollection. I
7 believe that I saw it at that time.

8 Q. And you were participating in trying to obtain
9 financing during that time, weren't you?

10 A. I participated in meetings, yes.

11 Q. Who was taking the lead on getting the facility
12 from Credit Suisse First Boston?

13 A. Economics of those kinds of transactions would
14 generally be discussions amongst Dick Hylland
15 and Kipp Orme from the finance side. And then
16 I would have the lead in executing the
17 transaction from the legal documentation side
18 and all of the many steps that would be
19 required, in particular, for a secured
20 facility.

21 Q. Do you know what Mr. Hylland and Mr. Lewis
22 meant when they say here that "Two additional
23 factors over this timeframe have now also come
24 to light that greatly impact the urgency of
25 executing an FMB or other secured transaction"?

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1 Do you see that?
 2 A. Yes, I do.
 3 Q. How do these factors impact the urgency?
 4 A. Well, I believe we had looked previously at the
 5 new information from Expanets and so the board
 6 was concerned about what the real situation was
 7 at Expanets and was surprised by that
 8 revelation of that information. And around
 9 this time we're still in the process of
 10 investigating that, so it was an unknown.
 11 In number 2, it seems to refer to a
 12 covenant, but I can't recall the specifics.
 13 Q. So to the extent that the existing debt would
 14 have had covenant defaults, getting new debt
 15 which didn't have those defaults would be
 16 important, correct?
 17 A. I believe the existing debt had the ability to
 18 be rolled over if you were in compliance with
 19 certain covenants. And so if you did not
 20 comply -- were not in compliance with a
 21 particular covenant, you would not have the
 22 election to roll, you would need the consent of
 23 the lender or have to get alternate financing.
 24 Q. And typically needing to restate your
 25 financials would be a covenant default,

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1 Q. Now, if there were covenant defaults, would it
 2 cause an acceleration of the debt?
 3 A. It could. Typically lenders work with a
 4 company, they don't want to default either.
 5 Q. Now, at that point, there's knowledge, was
 6 there not, that there were serious finance
 7 accounting issues at Expanets?
 8 A. I believe as I testified that process was
 9 undergoing at this point. The audit committee
 10 was beginning to look into that and asking
 11 questions and demanding answers from the
 12 Expanets management team.
 13 Q. And there was the expectation at that point
 14 that financials would have to be restated,
 15 wasn't there?
 16 A. I don't believe that that decision had been
 17 made yet.
 18 Q. Under consideration at that point though,
 19 wasn't it?
 20 A. I don't recall.
 21 Q. Were there disclosure recommendations that were
 22 talked about in connection with this memo that
 23 you recall?
 24 A. I don't have a recollection in connection with
 25 this memorandum. I do recall that my advice to

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1 wouldn't it?
 2 A. I don't know.
 3 Q. In your experience, isn't there a covenant
 4 usually that the financials that you publicly
 5 file are not misleading or --
 6 A. Yes.
 7 Q. -- accurate?
 8 Do you recall -- there is a reference
 9 further down on the page to -- highlighting
 10 to -- an agenda that highlighted NorthWestern's
 11 liquidity requirements. "These alternatives
 12 will be reviewed with the board."
 13 Do you see that?
 14 A. Yes, I do.
 15 Q. In connection with the agenda -- the attached
 16 agenda also highlighting NorthWestern's
 17 liquidity requirements, what were the liquidity
 18 requirements at that time, if you recall?
 19 A. I don't recall. It might just primarily be
 20 talking about the maturity date.
 21 Q. Well, whether the maturity would, what, be
 22 accelerated by covenant default?
 23 A. No, I believe the discussions were about
 24 rolling that over or refinancing that at its
 25 scheduled maturity date.

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1 the audit committee was that once we had this
 2 information from Expanets, the audit committee
 3 should undertake a process to ask questions,
 4 determine for itself what the situation was.
 5 And then based on that information, make any
 6 corrective disclosures required. And I believe
 7 a new press release was issued sometime within
 8 a couple of days of this date, is my
 9 recollection.
 10 Q. Did you participate in obtaining a valuation
 11 report for Credit Suisse First Boston to assist
 12 in the financing referred to in the
 13 December 7th memo?
 14 A. I'm not sure what you mean by "evaluation
 15 report."
 16 MR. BRENNER: Did you say evaluation
 17 or valuation?
 18 MS. STEINGART: A valuation of...
 19 (Deposition Exhibit Number 25 marked
 20 for identification.)
 21 BY MS. STEINGART:
 22 Q. Okay. We brought this, 25, it's a cover memo
 23 with a valuation report -- an appraisal.
 24 Not evaluation. An appraisal.
 25 Did you participate in arranging for

41 (Pages 158 to 161)

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1 an appraisal for CSFB in connection with the
 2 financing that was being discussed with CSFB in
 3 December?
 4 A. (Reviews document.) No. Kipp Orne would have
 5 been the interface with this bearing point firm
 6 or Mike Hanson.
 7 Q. Do you recall being provided a copy of the
 8 final appraisal?
 9 A. I don't recall.
 10 Q. If you look at the e-mail on the cover, you see
 11 that it was provided to you?
 12 A. Yes, I do.
 13 Q. Did you understand that the appraisal
 14 determined -- it is called a valuation report,
 15 but the appraisal determined that as of
 16 December 31, 2002 that the assets of the
 17 Montana Power Company were valued at
 18 \$1.5 billion?
 19 A. I don't have a recollection of that. I see
 20 that on page 3 as, one, I believe they use
 21 typically several different methods of
 22 valuation. So I don't know if that's an
 23 average or if that's one of several that they
 24 chose. I don't know.
 25 Q. Was that the valuation report that was provided

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1 Q. So it's not your recollection that it closed in
 2 or around the middle of November of 2002?
 3 A. It's my recollection it closed sometime in
 4 October or November, but I don't have a date.
 5 Q. So this valuation, as far as your recollection
 6 goes, was done shortly after the closing of the
 7 going-flat?
 8 A. That I do not know. Let me see the date of
 9 this.
 10 Q. It says "As of 12/31/2002."
 11 A. I see that. But the e-mail is January 30th and
 12 oftentimes appraisals are as of a date but the
 13 work is conducted well after that date but
 14 delivered with a reference date. So the fact
 15 that it's December 31st doesn't mean it was
 16 done as of that date. And in fact, it could
 17 have been finished sometime in January and then
 18 delivered.
 19 Q. But it values the assets at an as-of date,
 20 correct?
 21 A. That's correct.
 22 Q. So what the report says is as of the end of
 23 2002 this was the value of the asset, correct?
 24 A. That's correct. That was different than the
 25 question then when it was prepared.

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1 by the company to CSFB?
 2 A. I don't know. I assume it was.
 3 Q. If you look at the last page, 56.
 4 A. (Reviews document.)
 5 Q. Do you see that it says "Conclusion of fair
 6 value"?
 7 A. Yes, I do.
 8 Q. Now, did you understand the amount of
 9 liabilities that were assumed by NorthWestern
 10 in connection with the going-flat transaction?
 11 A. I don't understand the question. Did I
 12 understand the amount of the liabilities?
 13 Q. Did you have an understanding of the amount of
 14 the liabilities assumed by NorthWestern in
 15 connection with the going-flat transaction?
 16 A. Originally?
 17 Q. In November of 2002.
 18 A. Oh, no, I don't have a recollection.
 19 Q. Now, this valuation as of 12/30/2002 was
 20 several weeks after the going-flat transaction,
 21 correct?
 22 MR. BRENNER: He's already said
 23 several times he doesn't remember when it
 24 closed.
 25 BY MS. STEINGART:

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1 Q. As general counsel of NorthWestern, did you do
 2 an assessment of the value of the assets being
 3 transferred and the liabilities assumed by
 4 NorthWestern in connection with the going-flat
 5 transaction?
 6 A. I did not.
 7 Q. Was any determination made about whether there
 8 was a disparity in value with respect to the
 9 assets transferred and the liabilities assumed?
 10 A. I don't recall.
 11 Q. Did anyone ask for such an assessment to be
 12 made?
 13 A. I don't recall.
 14 Q. Did anyone on behalf of Montana Power indicate
 15 that in order to protect the creditors of
 16 Montana Power, that an assessment of the assets
 17 transferred and liabilities assumed should be
 18 made?
 19 MR. KALECZYC: Objection.
 20 THE WITNESS: By Montana Power, do you
 21 mean the trust or the QUIP structure,
 22 because Montana Power was no longer around?
 23 BY MS. STEINGART:
 24 Q. NorthWestern, it had a different name at the
 25 time of the going-flat transaction, correct?

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<p>1 A. Right.</p> <p>2 Q. It was called NorthWestern Energy, I think. I</p> <p>3 don't remember. Can we agree that when we talk</p> <p>4 about the Montana Power Company we are talking</p> <p>5 about the company that was acquired in February</p> <p>6 of 2002?</p> <p>7 A. All right.</p> <p>8 Q. And whose assets were transferred in connection</p> <p>9 with the going-flat transaction?</p> <p>10 A. Yes.</p> <p>11 Q. So at the time of that transaction, did anyone</p> <p>12 who was an officer or director of the Montana</p> <p>13 Power Company or its successor raise issues</p> <p>14 with respect to the value of the assets being</p> <p>15 transferred and the liabilities being assumed?</p> <p>16 MR. KALECZYC: Objection.</p> <p>17 MR. PIZZURRO: I'm going to make an</p> <p>18 objection. I think the record is really</p> <p>19 getting muddy as to what entities we are</p> <p>20 talking about. I know they have similar</p> <p>21 names, but my best recollection is Montana</p> <p>22 Power Company was one of the entities that</p> <p>23 was on -- sold the unit interests in</p> <p>24 Montana Power, LLC which was acquired by</p> <p>25 NorthWestern in that transaction, closed in</p>	<p>1 based on what our understanding was of the</p> <p>2 structure of part of NorthWest before the</p> <p>3 acquisition of Montana Power, after the</p> <p>4 acquisition of Montana Power which would be</p> <p>5 page 2, and page 3 is after the going-flat.</p> <p>6 Now, I guess my question is: Looking</p> <p>7 at page 2, is it your understanding that the</p> <p>8 assets of the Montana Power Company were held</p> <p>9 by or held in the form of NorthWestern Energy</p> <p>10 Montana after the acquisition of the Montana</p> <p>11 Power Company?</p> <p>12 A. Immediately -- again, I'm not familiar with</p> <p>13 this chart.</p> <p>14 Q. Uh-huh.</p> <p>15 A. I see that it shows South Dakota and Nebraska</p> <p>16 operations down a couple of tiers and, in fact,</p> <p>17 those were an unincorporated division of the</p> <p>18 parent.</p> <p>19 Q. I see, okay.</p> <p>20 A. So right away there is a disconnect there.</p> <p>21 But I can testify that immediately</p> <p>22 following the acquisition, NorthWestern</p> <p>23 Corporation acquired all of the outstanding</p> <p>24 ownership interests of a limited liability</p> <p>25 company and the assets of the limited liability</p>
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<p>1 February of 2002 which then was renamed, if</p> <p>2 I can recall correctly, NorthWestern</p> <p>3 Energy, LLC subsequently was renamed Clark</p> <p>4 Fork and Blackfoot.</p> <p>5 BY MS. STEINGART:</p> <p>6 Q. And at the time of the going-flat transaction,</p> <p>7 the successor to the Montana Power Company was</p> <p>8 NorthWestern Energy, LLC?</p> <p>9 MR. KALECZYC: Objection.</p> <p>10 MR. PIZZURRO: I'm going to object and</p> <p>11 I'm not going to testify, but that's not my</p> <p>12 understanding.</p> <p>13 MR. KALECZYC: It's successor is vague</p> <p>14 and ambiguous.</p> <p>15 MS. STEINGART: Montana Power, LLC?</p> <p>16 Let's see if we can help.</p> <p>17 (Off the record.)</p> <p>18 (Deposition Exhibit Number 26 marked</p> <p>19 for identification.)</p> <p>20 BY MS. STEINGART:</p> <p>21 Q. Let's see if we can be clearer.</p> <p>22 A. (Reviews document.)</p> <p>23 Q. Now, I guess the question, you know, there are</p> <p>24 three org charts here that are not NorthWestern</p> <p>25 documents, okay, that we have put together</p>	<p>1 company with the utility operations of the</p> <p>2 Montana Power Company.</p> <p>3 Q. Were they placed in a subsidiary of</p> <p>4 NorthWestern Energy?</p> <p>5 A. By virtue of acquiring all of the limited</p> <p>6 liability company interests, you in effect had</p> <p>7 the subsidiary.</p> <p>8 Q. At the time of the going-flat transaction or</p> <p>9 thereafter when this appraisal was prepared,</p> <p>10 the appraisal was of certain underlying assets</p> <p>11 acquired from Montana Power, is that correct?</p> <p>12 A. I believe so.</p> <p>13 Q. And these were the assets that were transferred</p> <p>14 to NorthWestern in connection with the</p> <p>15 going-flat transaction, correct?</p> <p>16 A. I believe that's correct.</p> <p>17 Q. Okay. At the time of the going-flat</p> <p>18 transaction, did any of the officers or</p> <p>19 directors of the entity that held the Montana</p> <p>20 Power assets question, to your knowledge, the</p> <p>21 disparity in value of the assets transferred</p> <p>22 and the liabilities assumed by NorthWestern in</p> <p>23 the going-flat?</p> <p>24 MR. PIZZURRO: Objection.</p> <p>25 MR. KALECZYC: Objection.</p>

43 (Pages 166 to 169)

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1 THE WITNESS: Several aspects of that
 2 question I'm not commenting on any
 3 disparity or lack thereof, I don't know.
 4 BY MS. STEINGART:
 5 Q. Okay.
 6 A. The entity was a wholly owned limited liability
 7 company, a single member LLC, there is not a
 8 board of directors. There is a managing
 9 member, I believe that that was NorthWestern
 10 corporation although I don't specifically
 11 recall. So there was not a body, a board that
 12 was part of that entity.
 13 Q. Did anyone -- so no one on behalf of either the
 14 creditors or shareholders of any entity that
 15 had an interest in those assets questioned the
 16 legitimacy of the going-flat transaction?
 17 MR. PIZZURRO: Objection.
 18 MR. KALECZYC: Objection.
 19 THE WITNESS: The only shareholder
 20 with an equity interest was NorthWestern.
 21 I don't know what creditors undertook in
 22 terms of the process.
 23 BY MS. STEINGART:
 24 Q. Now, were there in connection with the
 25 going-flat transactions documents signed by the

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1 BY MS. STEINGART:
 2 Q. Now, were you involved in the restatement of
 3 the NorthWestern financials for Q-1, Q-2 and
 4 Q-3 that took place in 2003?
 5 A. Yes.
 6 Q. And these were restatements of the Q-1, Q-2,
 7 Q-3 for 2002?
 8 A. Correct.
 9 Q. That were done in 2003?
 10 A. Yes, in connection with filing the 10-K.
 11 Q. And at that time were you still chair of the
 12 disclosure committee?
 13 A. I believe so.
 14 Q. At what point did you leave NorthWestern?
 15 A. I believe I left in or around December of 2004.
 16 Q. What were the circumstances of your separation
 17 from NorthWestern?
 18 A. In connection with the filing of the bankruptcy
 19 proceedings, I and other executives were
 20 retained in connection with that process and
 21 provided incentives to assist NorthWestern in
 22 exiting that process and stayed on through the
 23 exiting of the bankruptcy. And then following
 24 that closing of that proceeding then left
 25 NorthWestern.

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1 entity that held those assets, the Montana
 2 Power Company assets?
 3 A. I believe so.
 4 Q. And who had the authority to sign those
 5 documents?
 6 A. I don't recall specifically. There was
 7 signature authority guidelines at NorthWestern
 8 for signing documents.
 9 Q. To the extent that there were creditors of the
 10 successor to the Montana Power, LLC, who
 11 reviewed the transaction on their behalf?
 12 MR. PIZZURRO: Objection.
 13 MR. KALECZYC: Objection.
 14 THE WITNESS: I don't know.
 15 NorthWestern would have reviewed the terms
 16 of its credit agreements and to comply with
 17 those, I don't know what work was done on
 18 behalf of the creditors.
 19 BY MS. STEINGART:
 20 Q. And certainly there was no fairness opinion
 21 done that the going-flat transaction was fair
 22 from a financial point of view to the creditors
 23 of the successor to the Montana Power, LLC?
 24 MR. PIZZURRO: Objection.
 25 THE WITNESS: Not that I recall.

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1 Q. What did you do to prepare for today's
 2 deposition?
 3 A. I met with counsel last night.
 4 Q. Okay. Did you meet with or talk with anyone on
 5 behalf of -- who was representing NorthWestern?
 6 A. I did not.
 7 Q. Did you speak with or talk with anyone who
 8 represented Mr. Hanson, Mr. Kindt?
 9 A. I did not.
 10 Q. Did you speak to anyone other than your counsel
 11 about this deposition, I mean other than
 12 telling people where you were going to be?
 13 A. I did not.
 14 Q. Were you aware that NorthWestern Corporation
 15 entered into a consent decree with respect to a
 16 cease and desist proceeding that the SEC had
 17 commenced against NorthWestern?
 18 A. Yes.
 19 Q. How were you aware of that?
 20 A. There was a press release to that effect.
 21 Q. Did you participate in the -- strike that.
 22 Had the SEC commenced its
 23 investigation that led up to that cease and
 24 desist before your separation from
 25 NorthWestern?

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1 A. Yes.
 2 Q. In your capacity as general counsel, did you
 3 participate in -- on behalf of NorthWestern in
 4 that investigation?
 5 A. Yes.
 6 Q. What was the status of that investigation at
 7 the time that you left NorthWestern?
 8 A. It had not concluded.
 9 Q. Have you had an opportunity to review the
 10 actual cease and desist order that was entered?
 11 A. I have.
 12 (Deposition Exhibit Number 27 marked
 13 for identification.)
 14 BY MS. STEINGART:
 15 Q. I'd like to show you what we've marked as
 16 Jacobsen 27 and ask you if you recognize this
 17 to be the Order instituting cease and desist
 18 proceedings, making findings and imposing a
 19 cease and desist order in connection with the
 20 SEC's investigation of NorthWestern?
 21 A. (Reviews document.) Yes.
 22 Q. Now, having participated in the restatement of
 23 the 2002 financials and in the preparation of
 24 the year-end 2002 10-K, is it your
 25 understanding that during the first three

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1 second quarter 10-Qs, I believe. And in those
 2 restatements headed the disclosure that we
 3 looked at in the comment letter.
 4 Q. So at the initial time that you restated the
 5 10-Qs, there were no additional disclosures
 6 about the functionality of Expert, correct?
 7 A. Correct.
 8 Q. So in the restatement of the 10-Q in 2003 for
 9 the first quarter, there was a -- an adjustment
 10 with respect to functionality of Expert,
 11 correct?
 12 A. I don't know -- by "adjustment," do you mean a
 13 financial adjustment, or do you mean additional
 14 disclosure text?
 15 Q. It was additional disclosure text.
 16 A. I don't recall.
 17 Q. Is it your understanding that the text was
 18 changed to indicate that during the first
 19 quarter of 2002, that Expert was not fully
 20 operational?
 21 A. I don't recall.
 22 Q. As you sit here today, though, you know that
 23 that's the case, don't you? That Expert -- you
 24 know aside from the disclosure, you know that
 25 it was the case that during the first quarter

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1 quarters of 2002 NorthWestern filed quarterly
 2 and current reports with the Commission that
 3 materially misstated NorthWestern's financial
 4 position at that time?
 5 A. That's clearly the finding of the Commission.
 6 Q. And is that something that you understood as a
 7 result of the restatements that you prepared on
 8 behalf of NorthWestern?
 9 A. The restatements had many different aspects to
 10 them, some were quite small in amount, some
 11 larger. So some were material, others I did
 12 not view as material.
 13 Q. Was -- you know, is it your understanding that
 14 any of the restatements for Q-1, Q-2 or Q-3, as
 15 a whole, were not material?
 16 A. I don't know.
 17 Q. Do you recall the substance of the matters that
 18 were restated in the first quarter of 2002?
 19 A. No.
 20 Q. Is it your understanding that it included
 21 advances from NorthWestern to Expanets?
 22 A. The company had more than one restatement. And
 23 so as a result of the S-4 registration process
 24 and the SEC comment letter process, we -- or
 25 NorthWestern, I believe, restated the first and

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1 of 2002 Expert was not fully operational?
 2 A. As I sit here today, I do know that Expert was
 3 not performing to the desired level.
 4 Q. As you sit here today, do you have an
 5 understanding that there were also adjustments
 6 with respect to earnings that were reported in
 7 the first quarter 10-Q?
 8 A. I don't recall.
 9 Q. Why did NorthWestern decide to file an amended
 10 first quarter 10-Q in 2003?
 11 A. As a result of the information that
 12 NorthWestern received at the end of November,
 13 which we looked at concerning Expanets, and the
 14 review by the audit committee and then later in
 15 connection with valuations of the investment in
 16 both Blue Dot and Expanets, it became clear
 17 that there would be substantial write-offs of
 18 the investment in those two entities.
 19 And then in connection with filing a
 20 10-K, the desire was to absolutely -- and the
 21 instruction from the board was to absolutely
 22 address any open issue or make any kind of
 23 disclosure that it thought to be appropriate to
 24 try to address any potential issue out there so
 25 that you could set a clean starting point with

45 (Pages 174 to 177)

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1 the 10-K that was filed in, I believe, April of
2 2003.
3 Q. So what process did you use internally to
4 decide what material in the first quarter 10-K
5 needed to be restated?
6 A. There was extensive work done by the outside
7 accountants with people on-site at all of the
8 operating companies. There were third-party
9 financial consultants brought in, both
10 financial advisory and operational consultants.
11 And there was additional counsel retained, all
12 of whom participated.
13 Q. And was the conclusion of all of those
14 participants that the first quarter 10-Q for
15 2002 should be restated?
16 A. We filed a restated 10-Q, yes. I don't know
17 what the conclusion of each individual
18 participant was in the process, but it resulted
19 in us filing a 10-Q that was restated.
20 Q. And when you say "it was decided," was it a
21 decision that you participated in or that was
22 communicated to you by somebody else?
23 A. I believe the process was primarily driven by
24 the accountants because in that situation the
25 company will do whatever the accountants tell

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1 2002 was materially misleading?
2 A. No.
3 Q. Do you have any reason, as you sit here today,
4 to dispute the SEC's conclusion that the 10-K
5 filed by NorthWestern for the second quarter of
6 2002 was materially misleading?
7 A. The 10-Q?
8 Q. Do you have any reason, as you sit here today,
9 to dispute the SEC's conclusion that the 10-Q
10 for the second quarter of 2002 was materially
11 misleading?
12 A. I do not.
13 Q. Same question with respect to the third quarter
14 10-Q.
15 A. I do not.
16 Q. The SEC also concluded that in its filings
17 after the effective taxes, NorthWestern
18 overstated its income from continuing
19 operations for the first three quarters of 2002.
20 by approximately 176 percent, 618 percent and
21 109 percent, respectively.
22 MR. BRENNER: Can you tell us where
23 you are reading from?
24 MS. STEINGART: I'm reading from
25 page 2, summary.

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1 them to do in order to get them to sign off on
2 the 10-K which required audited financial
3 statements.
4 Q. So is it your testimony that you restated the
5 first quarter 10-Q for 2002 because you needed
6 to do that in order for the auditors to sign
7 off on the year-end 10-K for 2002?
8 A. It's my recollection that there was not a
9 complete consensus on whether all of the
10 proposed restatements were necessary. And it
11 was a discussion amongst the financial group
12 and the auditors. And I believe that in the
13 context of NorthWestern at the time which was
14 the public release on this new information from
15 Expanets and the likelihood of a substantial
16 write down of the investment which then
17 ultimately was reflected in the 10-K that the
18 company should follow whatever recommendation
19 was made by the auditors in that respect as
20 opposed to try to argue for a new result.
21 That's my recollection of the financial
22 discussion.
23 Q. Do you have any reason, as you sit here today,
24 to dispute the conclusion of the SEC that the
25 first quarter 10-K filed by NorthWestern in

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1 BY MS. STEINGART:
2 Q. Do you have any reason to believe that the SEC
3 is incorrect in that conclusion?
4 A. I have no idea how those numbers were
5 calculated. So, no comment.
6 Q. The SEC also concluded that NorthWestern
7 overstated its income during the first three
8 quarters of 2002 due to the company's improper
9 accounting for accounts receivable, adjustments
10 to customers' bills, allocation of losses
11 to -- and allocation of losses to minority
12 interests.
13 Do you have any reason to dispute that
14 conclusion?
15 A. No.
16 Q. The SEC also concluded that NorthWestern also
17 misrepresented or did not disclose, among other
18 things, the effects of significant problems
19 with Expanets' new information technology
20 system, the material impact of Expanets'
21 reserve reductions and its receipt of
22 non-compete payments on Expanets' income, large
23 company advances to NorthWestern, advances
24 NorthWestern made to support Expanets and
25 Blue Dot and the timing of anticipated payments

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1 from the sale of certain utility assets.
 2 Do you have any reason to disagree
 3 with that conclusion?
 4 A. No.
 5 Q. The SEC also concluded that through its
 6 financial statements, misrepresentations and
 7 omissions, NorthWestern obscured the continuing
 8 poor performance of its subsidiaries.
 9 Do you have any reason to disagree
 10 with that conclusion?
 11 A. No.
 12 Q. Now, the SEC looked at a number of items that
 13 contributed to the conclusions that
 14 NorthWestern had materially misstated its
 15 quarterly reports during 2002.
 16 Are the items in the Consent Decree
 17 that the SEC has mentioned items that you dealt
 18 with in connection with your restatement of the
 19 quarterly reports?
 20 A. I don't recall.
 21 Q. Should we take a short break so that you can
 22 look at this and refresh yourself because I'm
 23 going to ask you about it.
 24 THE WITNESS: Let's take a quick bio
 25 break and keep going.

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1 both Expanets and Blue Dot would achieve 2002
 2 targeted earnings and begin providing cash to
 3 the NorthWestern consolidated entity in 2002?
 4 A. I believe statements to that effect were made
 5 at various times during the year.
 6 Q. Now, NorthWestern conducted its equity offering
 7 during the third quarter of 2002 and raised
 8 approximately \$87 million, correct?
 9 A. That's correct.
 10 Q. And also during the third quarter of 2002
 11 NorthWestern completed its registration in
 12 exchange of new notes for 720 million of debt
 13 it incurred to purchase Montana Power, is that
 14 true?
 15 A. Yes.
 16 Q. And it was during the fourth quarter that
 17 NorthWestern completed the going-flat
 18 transaction, correct?
 19 A. I believe that's true.
 20 Q. Now, in December 2002 NorthWestern disclosed
 21 that significant operational problems at
 22 Expanets and Blue Dot would materially impact
 23 the company's consolidated year-end financial
 24 results, correct?
 25 A. Yes.

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1 (Recess.)
 2 BY MS. STEINGART:
 3 Q. I'm on page 3 of the Cease and Desist and I'm
 4 on paragraph 7.
 5 A. (Reviews document.)
 6 Q. Now, it's correct, is it not, that the
 7 magnitude of NorthWestern's increased debt as a
 8 result of the Montana Power acquisition
 9 threatened the company's credit ratings?
 10 A. I believe it's accurate that incurring that
 11 much additional debt would be a negative factor
 12 for credit rating agencies.
 13 Q. And as a result NorthWestern announced its
 14 intention to conduct an equity offering during
 15 2002 to raise approximately 200 million to pay
 16 down its debt and improve its debt equity
 17 ratios.
 18 That's true, isn't it?
 19 A. NorthWestern did announce that as a plan.
 20 Q. And NorthWestern recognized that improvement in
 21 the performance of both Expanets and Blue Dot
 22 was critical to its planned equity offering,
 23 correct?
 24 A. It was a relevant factor.
 25 Q. And NorthWestern made public statements that

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1 Q. And that announcement came after the equity
 2 offering, correct?
 3 A. Yes.
 4 Q. And after the registration and exchange of the
 5 new notes, correct?
 6 A. Yes.
 7 Q. And after the completion of the going-flat
 8 transaction?
 9 A. Yes.
 10 Q. Now, I'm looking further down on page 4, the
 11 points relating to the Expert system. "The
 12 functionality of the Expert system was critical
 13 to Expanets," correct?
 14 A. Are you reading from a particular paragraph?
 15 Q. I'm just asking for that portion.
 16 A. It was one aspect of Expanets' operations. Top
 17 line sales were more important, collections are
 18 less important. If you are not getting any
 19 sales, there is nothing to collect.
 20 Q. In fact, ultimately, Expanets had sales without
 21 collections, didn't they?
 22 A. For a period of time I think subsequently they
 23 actually collected many of these receivables.
 24 Q. Following its implementation 2001, the Expert
 25 system was unable to perform many of the basic

47 (Pages 182 to 185)

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1 tasks for which it had been designed, that's
2 correct, isn't it?
3 A. I believe that's true as we sit here today,
4 yes.
5 Q. And the problems with Expert materially
6 affected Expanets' results from operations
7 throughout 2002, isn't that true?
8 A. I believe that's correct.
9 Q. NorthWestern's forms 10-Q for the first and
10 second quarters of 2002 and associated press
11 releases attached to Form 8-K mischaracterized
12 Expert's billing system -- I'm sorry, billing
13 activities as fully operational or operational
14 and failed to adequately disclose the magnitude
15 of the system's problems and the material
16 impact of those problems on Experts'
17 operations, that's correct, isn't it?
18 A. That is the SEC's finding.
19 Q. And as you sit here today, do you have any
20 reason to believe that that's not correct?
21 A. I don't have a view one way or the other on
22 that. Depending on what you mean by
23 "operational" or "fully operational," the
24 disclosures at the time were consistent with
25 the available information to me.

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1 failed to adequately disclose the magnitude of
2 the problem, do you disagree with that?
3 A. I don't know.
4 Q. Do you disagree that the first two 10-Qs for
5 2002 failed to disclose the material impact of
6 the Expert problems on Expanets' operations?
7 A. As I sit here today, those disclosures were
8 revised in connection with the filing of the
9 amended and restated 10-Qs.
10 Q. And you revised them because you were making
11 them correct?
12 MR. BRENNER: The "you" here is who?
13 BY MS. STEINGART:
14 Q. NorthWestern revised them in order for the
15 amended 10-Qs to be correct?
16 A. Correct.
17 Q. In its Form 10-Q for the third quarter 2002
18 NorthWestern disclosed that Expert had
19 encountered some problems particularly as to
20 billings and collections but did not disclose
21 the extent to which these system problems had
22 impacted Expanets' operations. That's correct,
23 isn't it?
24 A. That is the SEC's finding, yes.
25 Q. Do you have any reason to disagree with that?

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1 Q. Sir, you helped to restate the financials for
2 the first and second quarter of 2002, correct?
3 A. Yes -- excuse me, I helped to restate the 10-Q
4 reports, not the financial statements.
5 Q. You helped to restate the 10-Q reports for the
6 first and second quarter of 2002, correct?
7 A. That's correct.
8 Q. And from your point of view, the restatements
9 that you prepared as general counsel during
10 that period were correct --
11 MR. BRENNER: Object to the form.
12 BY MS. STEINGART:
13 Q. -- strike that.
14 When you prepared the restatements for
15 filing, was it your understanding that the
16 restatements were correct?
17 A. Yes.
18 Q. And as you sit here today, did those
19 restatements impact disclosures that are
20 referenced in the first sentence of
21 paragraph 13?
22 A. There was additional disclosure regarding the
23 Expert matters, yes.
24 Q. So the portions of that first sentence that you
25 disagree with are whether the initial filings

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1 A. I don't recall any reason to disagree.
2 Q. Now, during 2002, I'm looking at paragraph 15,
3 Expanets' bad debt reserve was inadequate,
4 correct?
5 A. I don't know, that's a financial statement
6 determination.
7 Q. And is that a -- an adjustment that was made to
8 the amended 10-Qs that were filed in 2003?
9 A. I believe it was.
10 Q. And is it your understanding that that
11 amendment was made in order to make the 10-Qs
12 accurate?
13 MR. BRENNER: More accurate?
14 THE WITNESS: I think the changes were
15 intended to make them more accurate but a
16 bad debt reserve is prospective in nature,
17 so later events would prove whether or not
18 it was ultimately accurate or not. It is
19 by nature a projection.
20 BY MS. STEINGART:
21 Q. It's your understanding that the thrust of the
22 SEC conclusion is that it was a projection that
23 should have been made during 2002?
24 A. I believe that's correct.
25 Q. And do you have any reason, as you sit here

9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civil Action No. C.A. No. 04-1494 (JJF)

MAGTEN ASSET MANAGEMENT CORPORATION and
LAW DEBENTURE TRUST COMPANY OF NEW YORK,
Plaintiffs,

v.

NORTHWESTERN CORPORATION,
Defendant.

Civil Action No. C.A. No. 05-499 (JJF)

MAGTEN ASSET MANAGEMENT CORP.,

Plaintiff,

v.

MICHAEL J. HANSON and ERNIE J. KINDT,
Defendants.

DEPOSITION OF: RICHARD FRESIA - April 30, 2007

PURSUANT TO SUBPOENA, the deposition of
RICHARD FRESIA was taken on behalf of the Plaintiffs at
1900 Grant Street, Suite 800, Denver, Colorado 80203, on
April 30, 2007, at 10 a.m. before Lisa A. Knight,
Registered Merit Reporter, Certified Realtime Reporter,
and Notary Public within Colorado.

Page 2		Page 4	
1	APPEARANCES	1	11 Order Instituting Cease-and-Desist Proceedings 76
2	For the Plaintiffs: GARY L. KAPLAN, ESQ.	2	
3	Magten Asset Management Corp. PHILIP Z. KIMBALL, Esq.	3	12 Memorandum to Disclosure Committee from Expanets' Disclosure Subcommittee, 3/25/03 96
4	& Jacobson LLP	4	
5	One New York Plaza	5	13 Timeline to Key Events (ultimately) leading to 12/31/02 reserve 103
6	New York, New York 10004-1980	6	14 Management Financial and Information Report Meeting, 2002 Calendar 114
7	For the Defendant: JENNIFER A. BAGNATO, ESQ.	7	
8	NorthWestern Corporation	8	
9	Curtis, Mallet-Prevost, Colt & Mosie LLP	9	
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12	For the Defendants: DANIEL J. AUERBACH, ESQ.	12	
13	Michael J. Hanson	13	
14	and Ernie J. Kindt	14	
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17	100 West Railroad Street	17	
18	Suite 200	18	
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20	For the Deponent: DAVID A. ZISSER, ESQ.	20	
21	Isaacson Rosenbaum P.C.	21	
22	633 17th Street, Suite 2200	22	
23	Denver, Colorado 80202	23	
24		24	
25		25	

Page 3		Page 5	
1	INDEX	1	WHEREUPON, the following proceedings were
2	EXAMINATION OF RICHARD FRESIA: PAGE	2	taken pursuant to the Federal Rules of Civil Procedure.
3	April 30, 2007	3	* * * * *
4	By Mr. Kaplan 5	4	RICHARD FRESIA,
5	INITIAL	5	having been first duly sworn to state the whole truth
6	DEPOSITION EXHIBITS: REFERENCE	6	testified as follows:
7	1 Notice of Service of Subpoena 5	7	EXAMINATION
8	(Rick Friesa (sic))	8	BY MR. KAPLAN:
9	2 NorthWestern Management Financial and Information Report for Month Ended June 30, 2002 15	9	Q. Good morning. I'm Gary Kaplan from Fried,
10	3 E-mail string, top e-mail to Hylland from Lewis, 4/9/02, Subject: RE: Board 21	10	Frank, Harris, Shriver & Jacobson on behalf of Magten
11	4 Form 8-K, NorthWestern Corp. - NWECC, 8/8/02 35	11	Asset Management.
12	5 E-mail string, top e-mail to Whitesel from Fresia, 8/14/02, Subject: FW: DRAFT Language on billing adjustments 39	12	I'm going to place before you what we're going
13	6 NorthWestern Corporation, August 8, 2002, Transcript of Earnings Call 45	13	to mark as Plaintiff's Exhibit 1.
14	7 E-mail to Onne from Fresia, 7/3/02, Subject: RE: Update - Billings and Collections IT Fix Schedule 49	14	(Deposition Exhibit 1 was marked.)
15	8 E-mail string, top e-mail to Hylland from Fresia, 9/1/02, Subject: RE: Expanets cash forecast 50	15	Q. I'm handing to you the subpoena that was
16	9 Form 8-K, NorthWestern Corp. - NWECC, 5/1/02 56	16	served in this action. Are you here today pursuant to
17	10 E-mail string, top e-mail to Fresia and others from Charters, 6/5/02, Subject: RE: Comment on Daily Flash Report 60	17	the subpoena?
18		18	A. Yes, I am.
19		19	Q. Okay.
20		20	A. I think as modified.
21		21	MR. ZISSER: Or maybe not modified.
22		22	A. My name is misspelled, and the man came much
23		23	later than courteous. But other than those two things.
24		24	Q. (BY MR. KAPLAN) We apologize for the late
25		25	arrival and for the misspelling.

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1 of in the ability -- getting asked questions, having to
2 respond were Charters and Fresia.

3 The whole thing had expanded now where
4 everybody felt like they had skin in the game. So Marty
5 Snella, who had been the person who I, to this day,
6 still think very highly of, who I was in some ways
7 feeling -- I don't know what the correct emotion was but
8 frustrated that he was never getting any of these
9 questions -- and it was clear to anybody who rationally
10 would think about this is that you should be asking the
11 guy who's trying to fix the system, when is it going to
12 be fixed, not the guy who is trying to collect the
13 money.

14 All of a sudden, he's now energized in being
15 involved in this. So we now have seven people who are
16 very much saying no, we didn't know that at this point.
17 We knew this. No, that's a lie. So on and so forth.

18 Q. Take it step by step. The committee met,
19 retained its own lawyer, sent a draft back to
20 NorthWestern.

21 A. Correct.

22 Q. And do you recall who it was sent to?

23 A. It would be sent back to Gary Drook and Kipp
24 Onne and Kurt Whitesel and Kendall Kleever but not to
25 Mike Hanson, for example, because he is not part of the

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1 A. Bruce Smith, I think.

2 Q. And what did Mr. Smith tell you when you
3 raised the concerns to him?

4 A. He acted surprised about the whole thing and
5 very much wanting to get to the bottom of it. And he
6 said, I'll get back to you in a couple of days. And
7 then a couple of days turned into a week and I hadn't
8 heard back, so I called him again. And I don't know if
9 I got ahold of him or not, but he basically went dark.

10 Q. And so then what did you do next?

11 A. By that time, I -- you know, we had gotten to
12 the point where we had our conversation where
13 NorthWestern came in, Bill Austin and the head of HR,
14 and said, You know why we're here. I said, I don't.
15 And they said, Well, we think you should leave. And I
16 said, Under what grounds? And they said, Suppression of
17 information.

18 And I said, What does that mean? Well, you
19 knew a bunch of stuff and you didn't tell anybody.
20 Well, I said, that's ludicrous.

21 Is this something to do with retaliation under
22 my whistle-blowing of -- on Sarbanes-Oxley? And they
23 said -- they acted shocked that I had called Bruce
24 Smith. They didn't seem to know about it.

25 But this whole thing at that point had an air

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1 corporate group, per se, at the time.

2 Q. And you mentioned one e-mail back with
3 Mr. Younger, I believe. But what was the next step?
4 You guys sent a draft back and then what happened?

5 A. Ultimately, I want to say I'm not even sure I
6 was around when the cake came out because I believe they
7 filed an extension. So I left the first few days in
8 May, and I'm not sure how it came out. Like I said,
9 five minutes after I left, I just tuned the whole thing
10 out.

11 Q. But in terms of your role in this, after you
12 got back -- after you sent back your draft to
13 NorthWestern, how did you hear that they were -- didn't
14 like your comments, for lack of a better word, or
15 weren't going to take your comments?

16 A. I'm not sure that they didn't take them. It
17 was one of these, they tried to get us to sign off on
18 the original piece. And the fact that they even
19 attempted without saying, Oh, we won't take these new
20 ones.

21 It was such a blatant issue that they had
22 tried to say, you know, this only happened within the
23 last month or two that I immediately went to the audit
24 committee chair.

25 Q. And the audit committee chair at the time was?

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1 of damage control on their part, where Gary Drook and
2 company had -- you know, they were trying to put Humpty
3 Dumpty back together again. But it was one of these
4 things that was difficult because there was so many
5 e-mails and the like.

6 And I had a fairly robust recordkeeping
7 system. And I turned much, if not all, of my records
8 over. And it just seemed so odd that they would feel
9 like they could somehow go back in time and undo this
10 whole thing.

11 Q. And who did you turn those records over to?

12 A. Oh, everybody from -- who are the attorneys in
13 California?

14 Q. Paul Hastings?

15 A. Paul Hastings and the like and company
16 officials.

17 Q. And when, approximately, did you turn over
18 those records?

19 A. Everywhere from probably January until when I
20 left.

21 Q. Did you ever create -- besides anything that
22 your counsel told you to create, did you ever create any
23 timelines, letters, memos to files, anything else that
24 sort of laid out everything that happened?

25 A. I think it was basically in talking to David.

19 (Pages 70 to 73)

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1 Q. Okay. But nothing that wasn't done, nothing
2 that wouldn't have been done?

3 A. Well, some I turned over to -- you know, memos
4 to file and the like to NorthWestern. And then I have
5 others that I haven't turned over.

6 Q. Just to be clear, there were memos to file
7 that you did -- there were NorthWestern memos to file
8 that you had done regarding this situation?

9 A. I'm not sure that there are memos to file as
10 much as just having -- you know, many of these e-mails
11 that you folks have, I don't know if you -- at what
12 point in the discovery you got them, but they came from
13 me originally; not that I had written them originally,
14 that I had saved them originally.

15 So you may have gone and done some forensic
16 work and found them in the system but some of it was
17 easy pickings because I just turned it over to Paul
18 Hastings.

19 Q. Did you ever create a timeline or any type
20 of -- something, again, besides what David told you to
21 create?

22 MR. ZISSER: Well, I mean, if you're -- you
23 can answer that.

24 A. Yeah. I'm looking at him because I don't
25 recall whether David and I created it together or I did

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1 Q. Have you read the -- have you seen the
2 Complaints that the SEC filed against Mr. Hylland and
3 others?

4 A. I don't believe I have.

5 Q. Have you seen the cease and desist -- the
6 findings made by the SEC regarding NorthWestern?

7 A. I don't believe I have. I know I heard
8 Hylland had settled recently. Is that what you're
9 talking about?

10 Q. There were a couple of settlements.
11 NorthWestern settled first, and that's what I'll show
12 first. And Mr. Hylland, Merle Lewis, Kipp Orme, Kendall
13 Kleever, Whitesel -- not Kleever, Whitesel, several
14 others settled within the last week. And we're going to
15 mark this as 11.

16 (Deposition Exhibit 11 was marked.)

17 Q. Again, you can take the time to read it. I'm
18 going to ask you in particular first to focus on page 4,
19 the problems relating to Expanets' computer system.
20 But, again, feel free to read as much as you want.

21 A. As I read this, I don't think I've ever seen
22 this before.

23 (Pause.)

24 A. So there's a lot here on Expanets. Is there
25 anything you would like me to focus on?

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1 it on my own. Yes, one was created.

2 Q. (BY MR. KAPLAN) Did you ever share it with
3 NorthWestern?

4 A. You know, I'm not sure. I think I may have,
5 but I'm not sure. By the time I created it, it was
6 really clear who the bad guys were and who the good guys
7 were. And there was really no love lost for the new
8 people.

9 As much as Dick could be an asshole, he was,
10 you know, kind of, in some ways, a straight shooter and
11 a, you know, misguided kind of desk-pounding kind of
12 guy. These new people seemed genuinely dishonest. And
13 they scared me.

14 Q. And I know I keep harping on this point but I
15 want to make clear that you never created a timeline at
16 NorthWestern or NorthWestern's counsel's direction.

17 A. No, I don't believe so. It was either self-
18 directed or David's direction.

19 Q. Okay. And then -- so is there anything else
20 with respect to the 10-K? After you tried to call
21 Mr. Smith, you're not sure whether you guys actually
22 connected the second time, and then you had the
23 conversation with Mr. Austin and others. Was there any
24 other discussion or communications regarding the 10-K?

25 A. No.

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1 Q. We're going to go through various sections,
2 but first, there are three paragraphs, 11, 12, and 13,
3 if you could read those first.

4 (Pause.)

5 A. Okay.

6 Q. And starting with paragraph 12, based upon the
7 information that you had as the CFO of Expanets, is
8 anything in paragraph 12 -- is everything in paragraph
9 12 accurate?

10 A. Yes.

11 Q. And then the same question with respect to
12 paragraph 13.

13 A. Yes.

14 Q. Now we're going to turn to page 5, the aged
15 accounts receivable. I apologize, it's a longer
16 section.

17 (Pause.)

18 A. I don't know about 20, the percentages in
19 there. 17 doesn't seem accurate.

20 Q. What do you believe is inaccurate about 17?

21 A. These reports demonstrated Expanets'
22 uncollectible accounts receivable exceeded its existing
23 bad debt reserve. They didn't prove uncollectible. We
24 collected that money in the first quarter of '03. So it
25 seems inaccurate even with 20/20 hindsight.

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1 Q. Okay. Other than paragraph -- is the rest of
2 paragraph 17 accurate other than that sentence?

3 A. Yeah, because that's a little bit like, "Other
4 than that, Mrs. Lincoln, how did you like the play?"

5 Q. Understand. But other than the percentages in
6 paragraph 20 and paragraph 17, perhaps the whole
7 paragraphs 14 through 20 are accurate with those
8 caveats?

9 A. Yes.

10 MR. ZISSER: Let me look at 15.

11 Q. (BY MR. KAPLAN) Well, 15 -- I'll say
12 that -- I'm happy to go through them one by one.

13 MR. ZISSER: Yeah.

14 A. 15 does smack a little bit of a 17 problem.

15 Q. (BY MR. KAPLAN) Well, let's start with 14.
16 Why don't we go paragraph by paragraph.

17 A. Okay. 14 looks okay.

18 Q. 15, I was not going to ask you since it talked
19 about aged receivables that predated implementation of
20 EXPERT. So you can answer it if you know, but I'm not
21 going to ask you to guess.

22 A. I don't.

23 Q. Okay. 16?

24 A. 16 is true. That's the 30 million that I
25 suggested we need to supplement into the bad debt

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1 A. I don't have the numbers in front of me, but I
2 guess I would question as to whether the, in hindsight,
3 uncollectible amount, No. 1, whether it even truly
4 became uncollectible, because we're talking about this
5 as of the time of the K, is when this was known, or was
6 that enough to even swamp the boat.

7 Q. Well, when you're setting a reserve, it
8 doesn't mean that there's zero chance. If you're
9 setting, for example, bad debt reserve, it doesn't mean
10 there's zero chance of collecting, right?

11 A. Right..

12 Q. Is there a rule of thumb, for lack of a better

13 word, that you use when creating a reserve?

14 A. Historical collection ability, which,
15 historically, we were -- I think they were more
16 pessimistic than historical amounts. And so by setting
17 the historical amounts plus some, they would be basing
18 that on, you know, what was history.

19 I think the dilemma we've got is accounting,
20 by its very nature, is full of estimates, and there
21 isn't a whole lot of historical precedent of what if you
22 spent a hundred million dollars on a system and can't
23 collect on anything for a year.

24 Q. But going back into 18, where it says
25 NorthWestern did not disclose information indicating

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1 reserve.

2 Q. Okay. 17, I just have one question. I
3 understand your very big caveat on that one. One
4 question: You said that all of the receivables were
5 collected in '03. Did you really mean all of them were
6 collected?

7 A. I would say all of the ones that -- again, I
8 don't have the documentation, but I know that we had
9 collections plans, and we were at something like 110
10 percent or 120 percent consistently through the first
11 few months of those collections plans. And those
12 collections plans would have included the old
13 receivables.

14 Q. Okay. But when you generated the collection
15 plan, did you, in essence, create your own reserve? I
16 mean, did you have a collection plan that assumed we're
17 going to collect everything or when you had it, you
18 assumed you're going to collect less than all and set a
19 target?

20 A. We all assumed we're going to collect less
21 than all even in a perfect, non-EXPERT world. But it
22 seemed like the plan was fairly aggressive. It wasn't
23 just saying, Hey, we'll collect this suboptimal amount,
24 and we did great against that.

25 Q. Then paragraph 18, is that accurate?

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1 that a loss as a result of its uncollectible accounts
2 receivable was probable or reasonably possible.

3 A. Yeah. That's the part I'm taking exception
4 to, which is, even if we discount the fact that
5 collections gained traction in the first quarter of '03,
6 and we just did the sky-is-falling thing, I'm not
7 convinced that the uncollectible accounts receivable was
8 enough to completely eliminate the profitability of the
9 company. I don't know. That's a bold statement.

10 To say that indicating a loss, meaning not --
11 no income, actually negative earnings as a result was
12 probable or reasonably possible.

13 Even with 20/20 hindsight, sitting here today,
14 I wouldn't agree with that statement.

15 Q. And then paragraph 19, is that accurate?

16 A. Those are just statements of fact.

17 Q. And then paragraph 20, understanding that you
18 can't vouch for the percentages.

19 A. I guess the one exception I would take to that
20 is the result of improper accounting. You know, for all
21 the reasons I've given already, which is I will tell you
22 at the time I was banging the drum, I was convinced we
23 should take the extra reserve, but Dick had some very
24 reasonable reasons in retrospect as to why he didn't
25 want to take them, the Avaya covering it. As soon as

21 (Pages 78 to 81)

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1 it's fixed, we'll collect it kind of thing, so . . .

2 Q. We'll get back to the document, but is it your
3 view that Mr. Hylland was made a scapegoat by the
4 company?

5 A. Yeah. I have very mixed emotions because I
6 disliked every moment I worked for the guy, but I think
7 he was made a scapegoat.

8 Q. Why do you think he was made the scapegoat?

9 MR. ZISSER: Why did you come to the
10 conclusion or are you asking him what the motivation
11 was?

12 MR. KAPLAN: No.

13 Q. (BY MR. KAPLAN) Why do you think -- what
14 leads you to the conclusion that he was a scapegoat?

15 A. Well, I think that he's an easy target because
16 nobody liked him. So, I mean, he wasn't revered, so it
17 wasn't like there was a lot of defense coming to him.

18 He had been getting counsel from me, you know,
19 sometimes directly, sometimes indirectly, and he
20 seemingly was ignoring it. And then when the time came
21 to take the earnings charges in December, they kind of
22 threw everything but the kitchen sink in there. So it
23 was a perfect storm of being able to blame him.

24 On top of that, Merle Lewis, who was the
25 chairman, who ultimately was, like, Why don't we blame

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1 verbally told them myself.

2 So the fact that Dick knew and they didn't is
3 ludicrous.

4 I don't know about the board. I do know that
5 we put all of those exceptions with our Sarbanes-Oxley
6 disclosure committee in writing. I don't know if the
7 board actually read them or not, but I specifically
8 asked the question, are these available to the board?
9 And I think the answer was something like, it isn't like
10 we're going to purposely give them to them but if they
11 ask, which any reasonable fiduciarily responsible audit
12 committee would, they certainly are available to them.

13 Q. And just to clarify, this isn't all by
14 Mr. Hanson, so when I ask for senior management, I'm not
15 trying to rope in Mr. Hanson.

16 A. I just know he's a defendant.

17 Q. He's only one.

18 A. Okay.

19 Q. But I'm just trying to get a sense. Again,
20 the allegations against Mr. Hylland appeared to be that
21 he was a rogue person that had all this information that
22 was, in essence, suppressed?

23 A. I wouldn't view it like that at all.

24 Q. Now turning back to this document, a few more
25 pieces I want you to look at. Adjustments to customer

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1 Merle as well, Merle would fall asleep in board
2 meetings. I mean, he was definitely asleep at the
3 switch.

4 And so I think Dick -- the combination is Dick
5 was an -- the easiest target possible.

6 Q. Do you think that Mr. Hylland had information
7 with respect to the issues created by the EXPERT problem
8 that others at NorthWestern -- that others -- let me
9 strike that and try to articulate a decent question.

10 One of the allegations against Mr. Hylland is
11 that he knew about the EXPERT problems but didn't tell
12 the board or other members of senior management. Based
13 on what you know, is that a fair accusation?

14 A. Define -- give me the scope of senior
15 management.

16 Q. Well, how would you define NorthWestern's
17 senior management?

18 A. Well, I'm not sure exactly who this is about,
19 but it sounds like it's about Mike Hanson. So if senior
20 management was strictly the corporate units but not
21 necessarily somebody who was senior management of
22 another operating unit, like Blue Dot and the other
23 ones, the energy company, clearly everybody in senior
24 leadership in a corporate administrative role knew about
25 this. And I know that because I was present and

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1 bills on page 6.

2 A. Okay.

3 Q. If you could just read paragraphs 21 through
4 26.

5 (Pause.)

6 A. Can I take a health break and then we'll --

7 (A discussion was had off the record.)

8 (Noon recess taken from 12:14 p.m. to

9 12:54 p.m.)

10 MR. KAPLAN: Back on the record.

11 Q. (BY MR. KAPLAN) I think we were up to
12 paragraph -- we had done through paragraph 20 of the
13 cease and desist order. We had talked about that. I
14 think where we had broken was you had just read through
15 paragraphs 21 through 26; is that correct?

16 A. Correct.

17 Q. I'm going to go through the same drill with
18 these paragraphs. First, paragraph 21.

19 A. That looks accurate.

20 Q. Okay. And then paragraph 22?

21 A. It looks accurate, except I can't vouch for
22 the numbers after so long.

23 Q. And paragraph 23?

24 A. It looks accurate. And I guess I would add
25 the context that if I recall correctly, June was the

Page 86

1 first month of the unsuppressed opening balances. And
2 so we had internally forecasted that that would be a
3 kind of moving-the-pig-through-the-python situation; and
4 that we viewed once that was done, that it would
5 subside.

6 Q. And just remind me, I know you used the term
7 earlier in the deposition but I don't remember exactly
8 the unsuppressed billing numbers.

9 A. That is the situation where you'll get a bill
10 for the monthly charges but to the extent you have
11 previous months outstanding, that wasn't listed.

12 Q. Okay.

13 A. And so our view was that customers really
14 never had seen what we thought they owed us in total
15 until that moment. Of course, when they saw that, it
16 would be like getting your cable bill. You'd go, wait a
17 second. I didn't order HBO and On Demand or whatever.

18 So we viewed that there would be one month of
19 that, because once you get your cable bill, you don't
20 call up three months later and say I didn't order HBO or
21 On Demand. You call up fairly timely.

22 Q. Paragraph 24?

23 A. Yeah. I think the numbers obviously are hazy
24 to the point of I have no clue. Order of magnitude
25 looks right. I don't know about this "due to a planned

Page 88

1 public filings.

2 Q. We'll get that. I agree. Taken in isolation,
3 it seems that way, but when we get there, that's their
4 allegation?

5 A. Fair enough.

6 Q. Paragraph 28, is that accurate?

7 A. Sounds right, except, again, numbers are hazy
8 at this point. And I don't know that I ever knew what
9 percent they were of NorthWestern's reported income.

10 Q. Okay. Same question for 29, again, I'm not
11 asking for you to vouch for the numbers and percentages.

12 A. Okay. Same answer, then, looks appropriate.

13 Q. Paragraph 30.

14 A. I guess my assumption, then, is about the
15 numbers would have been that that wouldn't have tipped
16 the balance to the point of was able to report 8.7 of
17 operating income rather than substantial operating loss.
18 That sounds pretty dramatic.

19 Q. But would you agree that it would have had to
20 report a loss? Take out "substantial," but would you
21 have -- do you know enough to be able to answer whether
22 it would otherwise have been a loss but for reduction in
23 reserves?

24 A. Well, I mean, this really -- I don't. This
25 gets to the point of I don't see any pages saying why

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1 correction," blah, blah, blah, would exceed estimates by
2 an additional 3.4 million. That doesn't ring a bell.

3 Q. On paragraph 25?

4 A. I'm assuming that's factually correct. The
5 numbers, again, I don't recall.

6 Q. 26, since it's all numbers and percentages,
7 I'm not going to ask you to try and vouch for that.

8 A. Sure. Thank you.

9 Q. Then if we could go to the next category,
10 which are reserve reductions.

11 A. Okay.

12 Q. If you could read 27 through 31.

13 A. Okay.

14 Q. And let's go through them paragraph by
15 paragraph. 27, is that paragraph accurate?

16 A. Accurate but not -- it's inaccurate by
17 omission, I would guess. What it's not saying is that
18 the external auditors went back and audited all the
19 reserve reductions and deemed that they were taken in
20 the appropriate periods.

21 So I guess if I were writing this as a glass
22 half empty, half full, I think there -- whoever wrote
23 this is very remiss in doing it because it makes it
24 sound like they were inappropriately taken, when I think
25 their point is it should have been disclosed in the

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1 did you put those reserves on the books the year before
2 because people bought and sold our stock based on that.
3 So, I mean, it's a classic SEC taking the more juicy
4 part of the argument rather than in balance.

5 Q. Okay. And then paragraph 31?

6 A. That's correct.

7 Q. We're almost done.

8 If you could look at the unusual transactions,
9 paragraph 32 through 36.

10 A. Okay.

11 Q. Is paragraph 32 accurate?

12 A. I would say it's mischaracterized, these
13 noncompete-type payments. As I explained, I thought
14 they were more to make up for the difference -- they
15 weren't about competition, they were more to make up for
16 the difference in what assets Expanets was -- or
17 NorthWestern was buying from Avaya as opposed to a
18 noncompete.

19 So I'm not sure -- that's what threw me when
20 you mentioned noncompete earlier. I just never heard or
21 dealt with it like this because there was certainly no,
22 You can't go solicit these customers, which is what I
23 would call noncompete.

24 Q. Would you agree, though, that even if they
25 were not noncompete payments but they were -- I'm trying

23 (Pages 86 to 89)

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1 to remember the term you used earlier.
 2 A. Maintenance left behind.
 3 Q. Maintenance left behind -- Would you agree
 4 that maintenance left behind payments are not
 5 characteristic of Expanets' regular operations and
 6 therefore represented unusual transactions?
 7 A. I would not agree with that characterization.
 8 My point is that if the deal had gone through the way it
 9 would have, those payments would have come through the
 10 normal course of business, so it was a complete
 11 balancing of what they would have gotten.
 12 And I make that point by saying Avaya's not a
 13 charitable organization. They wouldn't have written
 14 those checks unless they felt like somehow those
 15 payments should have been part of the deal.
 16 Q. Paragraph 33, is that accurate?
 17 A. I don't know about the exact numbers, and I
 18 can disagree with the nomenclature.
 19 Q. Paragraph 34, understanding that the numbers
 20 you may not recall as well as the terminology of them as
 21 noncompete payments, is it otherwise accurate?
 22 A. I won't use my Lincoln quote anymore, but,
 23 yeah. I mean, other than those two things, which is the
 24 whole thing, it's accurate. It's got a period at the
 25 end. It's capitalized properly. Sorry to be a wise

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1 I'm going to go through with you, and that's the
 2 intercompany advances to Expanets and Blue Dot. And
 3 we'll only focus for each of these paragraphs on
 4 Expanets. So if you could read 37 through 42.
 5 A. 37 is correct. I'm not sure about the number,
 6 but it sounds about right.
 7 Q. Okay. 38?
 8 A. The only thing that's wrong with 38 would be
 9 that I started 15 days into the quarter, and we've got
 10 that e-mail from me which I'm usually pretty accurate on
 11 that said not only did we not borrow anything more, we
 12 repaid 5 1/2 million. So that doesn't jibe with 50
 13 million borrowed.
 14 And if we're talking about 5 1/2 versus 5.6
 15 million, I'd say whatever. But we're talking about a
 16 whole different direction by tenfold.
 17 Q. If you turn back to that MFIR, the management
 18 financial --
 19 A. Yeah. I think the difference between that, if
 20 I remember correctly, is NorthWestern was asking
 21 Expanets to pay for itself through cash flow. And so
 22 there were \$25 million payments that were due for that.
 23 I wouldn't characterize that as operating
 24 expenses.
 25 Q. Well, so when you look at the -- what have we

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1 ass. I'm just getting tired.
 2 Q. I understand. I hate to do this to you, but
 3 paragraph 35, is it accurate? With the same caveats.
 4 A. Ditto.
 5 36?
 6 Q. I'm sorry. I didn't know if you were joking
 7 when you answered 35. Taking, with the caveats of the
 8 characterization of noncompete payments, with your
 9 disagreement with that characterization and --
 10 A. Yeah. Yeah. If we change the -- I'm sorry.
 11 Go ahead.
 12 Q. With the caveat that you disagree with the
 13 characterization of them as noncompete payments and your
 14 inability to verify --
 15 A. There's no numbers in this one.
 16 Q. 35?
 17 A. Oh. I'm sorry. 35. Yes.
 18 Q. It's accurate with those caveats?
 19 A. Correct.
 20 Q. Okay. Then 36?
 21 A. 36, other than characterizing them as
 22 noncompete. I don't know for a fact that they didn't
 23 disclose them, but assuming that that's true, then I
 24 would agree with this.
 25 Q. And then this is the last section of this that

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1 marked this as? When you look at Exhibit 2, do you
 2 think that the incremental borrowings there on page 9,
 3 including the operating -- payment for operating
 4 expenses?
 5 A. Is this a cumulative chart?
 6 Q. It looks to us --
 7 A. It looks to me, also.
 8 Q. You know this chart.
 9 A. So this basically supports my stance, right?
 10 Doesn't look like it went up 50 million to me. It looks
 11 like it went down.
 12 Q. I think you could look from March -- it looks
 13 like from March to -- sometime March to April, it may
 14 have been the period before you got there, there's a big
 15 jump from -- is that 105 to 145 or somewhere in that
 16 range? It's 150. That's how we've read this chart. If
 17 you disagree --
 18 A. Okay. I'm sorry. I was looking at April as
 19 the beginning. Yeah. And I guess that would jive with
 20 the fact that maybe it was all borrowed within the first
 21 two weeks before I started.
 22 Q. Okay.
 23 A. I stand corrected then. I'm not sure about
 24 the number, but do you folks have any further detail
 25 that would indicate when in April it was borrowed?

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1 Q. If we have any -- we're not trying to fool you
2 on it. To the extent we have anything to be more
3 specific --

4 A. No. No. I'm trying to be accurate in my
5 answer because we saw this other thing where I said
6 since the new management team, which would be
7 April 15th, we have only done 5 1/2 million. So I would
8 suspect there was a large borrowing in the first 15 days
9 of the month.

10 Q. Okay. Paragraph 39 is Blue Dot, so I'm not
11 going to ask you about that, as is paragraph 40.

12 Paragraph 41, I'm going to ask you whether
13 that's accurate but only with respect to Expanets and
14 not with respect to Blue Dot.

15 A. Okay. Now, this doesn't mention a time period
16 because, as I pointed out, we were accreted on cash from
17 April 15th on, so -- and the word "further" would
18 indicate they're not talking about the initial
19 investments. So do we know what the time bound of this
20 statement is?

21 Q. Other than in the context which I can
22 interpret, you can interpret. So if you can't answer --

23 A. So I can't -- I'd need to know a time period
24 to know whether it's true or not.

25 Q. If we were talking in the first quarter of

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1 September '02, so I'm confused. If they disclosed it in
2 the second quarter of '02, that would be, what,
3 August 15th filing? And so ...

4 Q. (BY MR. KAPLAN) I believe -- again, you can
5 interpret it, one, they disclosed the existence but they
6 didn't disclose the amounts. They said, Hey, we lent
7 some money but they didn't disclose the amounts until
8 later. In essence, you can't answer 42, whether it's
9 accurate?

10 A. I guess if it was worth it, which it probably
11 isn't, we can pull out the balance sheet for that second
12 quarter and see how they're carrying intercompany
13 advances, which would talk about the amount, I would
14 think. It might not talk about to what subsidiary.

15 (Deposition Exhibit 12 was marked.)

16 Q. Do you recognize this document?

17 A. I think I recognize it. I'm not sure that
18 I've ever seen it with the hand marking on it.

19 Q. Aside from the hand marking, do you know --

20 A. Yes.

21 Q. What is this document?

22 A. This looks like the disclosure subcommittee
23 findings. Now, is that an accurate date on there?

24 Because there's one of these where the date was
25 inaccurate because of the way Word redid the date when

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1 2002, do you believe that it was --

2 A. If we're talking about the first
3 three-and-a-half months of 2002 through April 15th, I
4 would say it's a true statement, but that would be the
5 initial investment because my understanding is they
6 didn't really start borrowing until January.

7 So the word "further" seems to make it sound
8 beyond the initial. That's what's confusing me.

9 Q. And then paragraph 42, again, without
10 commenting on the allegations with respect to Blue Dot,
11 is it accurate with respect to Expanets?

12 A. Okay. I wasn't there in the first quarter, so
13 I don't know about that. Disclose in the second quarter
14 that made intercompany advances to Expanets, that sounds
15 like a good thing. Then the rest of it is about Blue
16 Dot.

17 Q. Well, I think if you read the sentence, it did
18 not disclose intercompany events to Blue Dot or any
19 information about the significance of the intercompany
20 advances to either subsidiary.

21 MR. ZISSER: I mean, it might be useful to
22 have some foundation of what "significance" was intended
23 to mean there.

24 A. It says before that, NorthWestern disclosed in
25 the second quarter. Then it says did not disclose until

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1 you pulled it up. It looks like the right one. Yeah, I
2 do recognize this.

3 Q. And, I'm sorry, I don't know if you answered.
4 What is the document?

5 A. It is the Expanets disclosure subcommittee
6 comments in -- help for preparing the 10-K.

7 Q. And these are the initial comments that the
8 subcommittee provided that ultimately were -- led you
9 to -- this is the process that ultimately led you to
10 going to the chair of the audit committee?

11 A. I don't know if it's the initial one, Gary.
12 I'm kind of hard pressed to say where they -- where it
13 is in the place. Let me look at it a little more
14 carefully, please.

15 (Pause.)

16 A. I guess -- I recognize it. I just don't know
17 where, in the pecking order of the things going back and
18 forth, whether it was the first shot, second, third.

19 Q. Do you recall there being multiple memos to
20 the disclosure committee from the Expanets disclosure
21 subcommittee?

22 A. Yes, I do.

23 Q. Do you recall how many?

24 A. I don't. I obviously could find out, but I
25 don't know how many.

25 (Pages 94 to 97)

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1 Q. You don't recognize the handwriting on there?

2 A. Kendall, confirm Deloitte and Touche, I would

3 guess. Okay with current --

4 Q. No. I'm not asking you to read it. I'm

5 asking if you recognize it.

6 A. No. I'm trying to get from the context of it

7 whether -- let's put it this way. I don't think it's

8 us. I don't think it's Expanets. I think it's

9 NorthWestern. It looks like they've taken this and then

10 gone through and said we agree. We don't agree. You

11 know, whether Tom Knapp, his name is next to it, he

12 needs to chase it down more. That kind of thing.

13 Q. Do you remember seeing this with the -- with

14 sort of the responses from NorthWestern in it?

15 A. No. I remember not seeing it. I've never

16 seen this with the notes on it. All the information

17 went kind of one way.

18 Q. I don't see any discussion in here with

19 respect to the timing, you know, by which I'm saying,

20 you know, when NorthWestern knew about the problem with

21 EXPERT. Would that have been covered in a different one

22 of these memoranda or is it in here and I'm missing it?

23 A. No, it wouldn't have been in here. It would

24 be versions -- can I -- what I'm talking about are

25 literally Edgarized -- not Edgarized but things that

Page 100

1 go to the fact that there was another document and

2 perhaps other drafts floating around but just not laying

3 it out or do you think there's something else?

4 A. The thing with the piecemeal fashion and --

5 Q. Piecemeal and informational language

6 requesting permitted.

7 A. You know, I'd have to read the whole thing for

8 content. Again, I think the thing that is challenging

9 -- and even reading for content is going to be a

10 challenge in recalling this, is, is this before or after

11 the document that we got that we said it didn't happen

12 at all like this?

13 Because we were somewhat uncomfortable in

14 addressing this in a piecemeal fashion was that they

15 would send, How about this? How about that? Rather

16 than just getting a complete document that we could

17 react to. They sent it down one chunk at a time, which,

18 No. 1, didn't give you the context of how it fit into

19 the entire story.

20 So that would lead me to believe right now

21 that this preceded the version where -- that we got

22 where we said we think there is misrepresenting the

23 timeline.

24 Q. Okay. And I apologize if I'm being repetitive

25 but I'm trying to see if there is a document, that we

Page 99

1 have gone through Donnelly, versions of their queue that

2 were near final that they had the fraudulent statements

3 that had been highlighted and then subsequently

4 corrected.

5 Q. So your recollection is you wouldn't

6 necessarily have a memorandum like this; instead, you

7 would have just a markup of a 10-K?

8 A. Right.

9 Q. Would that have been sent by the Expanets

10 disclosure committee to the disclosure committee? Was

11 there one person who was responsible for marking it up?

12 A. As I recall, it was something -- what I can

13 tell you is we did receive them, so we've gotten them

14 and retained them and then probably sent a voicemail

15 back like, What are you guys smoking? I mean, it was so

16 ludicrous, I'm not sure -- well, some of these things

17 are, well, we'll use this word rather than that word

18 kind of thing. This is just a, We don't even know where

19 to start --

20 Q. Okay.

21 A. -- kind of thing. So it would almost not lend

22 itself to being marked up and red-lined and sent back

23 because we were so taken back.

24 Q. Is the first bullet -- and I'm trying to just

25 interpret the document -- is the first bullet trying to

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1 make sure we have it.

2 A. Sure.

3 Q. Do you recall any document, be it memorandum

4 or written markup or any document in which you would

5 have given your -- you or anybody in Expanets'

6 disclosure subcommittee would have given comments to

7 NorthWestern on the draft of the 10-K?

8 A. I mean, I know I possess it, but I don't know

9 that anybody else kept it. I was the most rigorous

10 record keeper of my peers. And the people at

11 NorthWestern sure wouldn't want to keep it.

12 Q. If you look at the last two pages of the

13 document.

14 A. Um-hum.

15 Q. Do you recognize the document?

16 A. I do.

17 Q. What is it?

18 A. I alluded to this document earlier when I said

19 that the reserve reversals were appropriate -- in

20 hindsight were deemed appropriate. This is the document

21 that I was alluding to.

22 Q. Okay.

23 MR. AUERBACH: Just so we're clear for the

24 record, it's NOR 365796 and -797?

25 MR. KAPLAN: And -797.

10

Magten Asset Management Corporation, et al. vs. NorthWestern Corporation, et al.

04/12/07

KIPP ORME

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE</p> <p>3 MAGTEN ASSET MANAGEMENT) 4 CORPORATION and LAW DEBENTURE) 5 TRUST COMPANY OF NEW YORK,) 6 Plaintiffs,) C.A. NO. 04-1494(JJF) 7 vs.) 8 NORTHWESTERN CORPORATION,) 9 Defendant.)</p> <p>10 -----) 11 MAGTEN ASSET MANAGEMENT) 12 CORPORATION,) 13 Plaintiff,) C.A. NO. 05-499(JJF) 14 vs.) 15 MICHAEL J. HANSON and) 16 ERNIE J. KINDT,) 17 Defendants.)</p> <p>18 -----) 19 DEPOSITION OF 20 KIPP ORME 21 April 12, 2007</p> <p>22 LYON REPORTING, INC. 23 Certified Court Reporters 24 P.O. Box 81124 25 Atlanta, Georgia 30366 770/458-5500 800/767-2030</p>	<p>1 A P P E A R A N C E S 3</p> <p>2 For the Plaintiff Magten Asset Management Corporation: 3 BONNIE STEINGART 4 Attorney at Law 5 Fried, Frank, Harris, Shriver & 6 Jacobson, LLP 7 One New York Plaza 8 New York, New York 10004 9 (212) 859-8000 10 (212) 859-8585 (fax) 11 bonnie.steingart@friedfrank.com</p> <p>12 For the Plaintiff Law Debenture Trust Company 13 of New York: 14 JOHN V. SNELLINGS 15 Attorney at Law 16 Nixon Peabody, LLP 17 100 Summer Street 18 Boston, Massachusetts 02110 19 (617) 345-1000 20 (866) 947-1732 (fax) 21 jsnellings@nixonpeabody.com</p> <p>22 For the Defendant NorthWestern Corporation: 23 NANCY DELANEY (by telephones for a portion) 24 JOSEPH D. PIZZURRO (for a portion) 25 Attorneys at Law Curtis, Maller-Prevost, Colt & Mosle, LLP 101 Park Avenue New York, New York 10178 (212) 696-6000 (212) 697-1559 (fax) jpizzurro@cm-p.com</p>
<p>1 Deposition of KIPP ORME, taken on behalf of 2 the Plaintiff, Magten Asset Management Corporation, at 3 Lyon Reporting, Inc., 5873 New Peachtree Road, Suite 4 50, Atlanta, Georgia, on April 12, 2007, at 1:01 p.m., 5 before Donna F. Mollere, Certified Court Reporter and 6 Notary Public within Georgia.</p>	<p>1 A P P E A R A N C E S 4 (continued)</p> <p>2 For the Defendants Michael J. Hanson and 3 Ernie J. Kindt: 4 5 STANLEY T. KALECZYC (by telephone) 6 KIM BEATTY 7 Attorneys at Law 8 Browning, Kaleczyk, Berry & Hoven, P.C. 9 139 North Last Chance Gulch 10 Helena, Montana 59601 11 (406) 443-6820 12 (406) 443-6833 (fax) 13 stan@bkbh.com</p> <p>14 For the Deponent: 15 MELISSA K. ORME 16 Attorney at Law 17 NK Orme & Associates, LLC 18 34 Muirfield Court 19 Newnan, Georgia 30265 20 (678) 471-2785 21 (770) 254-0308 (fax) 22 melissaorme@nkormc.com</p>

1 (Pages 1 to 4)

Maglen Asset Management Corporation, et al. vs. NorthWestern Corporation, et al.
KIPP ORME

04/12/07

<p>21</p> <p>1 MS. ORME: Fifth.</p> <p>2 Q. (By Ms. Steingart) And the negative</p> <p>3 overall results during December were, in large part,</p> <p>4 due to the Expert system problems; right?</p> <p>5 MS. ORME: Fifth.</p> <p>6 Q. (By Ms. Steingart) Indeed, throughout</p> <p>7 2002 Expanets continued to need infusions of cash from</p> <p>8 NorthWestern to stay in business; isn't that right?</p> <p>9 MS. ORME: Fifth.</p> <p>10 Q. (By Ms. Steingart) In light of the</p> <p>11 problems with the Expert transition, NorthWestern</p> <p>12 began to advance cash to Expanets; isn't that right?</p> <p>13 MS. ORME: Fifth.</p> <p>14 Q. (By Ms. Steingart) And, indeed,</p> <p>15 Expanets needed a lot of cash, didn't it?</p> <p>16 MS. ORME: Fifth.</p> <p>17 Q. (By Ms. Steingart) Between December</p> <p>18 2001 and April 2002, NorthWestern advanced \$150</p> <p>19 million to Expanets; right?</p> <p>20 MS. ORME: Fifth.</p> <p>21 Q. (By Ms. Steingart) As CFO of</p> <p>22 NorthWestern and also because you remained in regular</p> <p>23 contact with Expanets' senior people, you were aware</p> <p>24 of the advances NorthWestern was making to Expanets as</p> <p>25 they were happening; correct?</p>	<p>23</p> <p>1 MS. ORME: Fifth.</p> <p>2 Q. (By Ms. Steingart) Now, it's true that</p> <p>3 after issuance of the second quarter 10-Q for 2002 but</p> <p>4 before the issuance of the third quarter 10-Q,</p> <p>5 NorthWestern did a public equity offering?</p> <p>6 MS. ORME: Fifth.</p> <p>7 Q. (By Ms. Steingart) And if we look at</p> <p>8 the third quarter 10-Q, in the third quarter 10-Q</p> <p>9 there is a disclosure of intercompany advances</p> <p>10 totalling \$191 million; right?</p> <p>11 MS. ORME: Fifth.</p> <p>12 Q. (By Ms. Steingart) Yet most of that</p> <p>13 over \$150 million of that was advanced prior to the</p> <p>14 filing of the 10-Q for the second quarter; right?</p> <p>15 MS. ORME: Fifth.</p> <p>16 Q. (By Ms. Steingart) And that wasn't</p> <p>17 disclosed in the second quarter 10-Q because</p> <p>18 NorthWestern did not want the market aware that --</p> <p>19 during the public equity offering; correct?</p> <p>20 MS. ORME: Fifth.</p> <p>21 Q. (By Ms. Steingart) Ultimately,</p> <p>22 Expanets had massive losses for 2002; correct?</p> <p>23 MS. ORME: Fifth.</p> <p>24 Q. (By Ms. Steingart) And these massive</p> <p>25 losses for 2002 caused the restatement in an aggregate</p>
<p>22</p> <p>1 MS. ORME: Fifth.</p> <p>2 Q. (By Ms. Steingart) To determine how</p> <p>3 much cash Expanets would get with each of these</p> <p>4 advances, you and Richard Hilland would discuss</p> <p>5 Expanets' cash requirements; correct?</p> <p>6 MS. ORME: Fifth.</p> <p>7 Q. (By Ms. Steingart) And NorthWestern</p> <p>8 was aware even by the end of December of 2001 that the</p> <p>9 Expert transition issues would require \$70 million</p> <p>10 more in working capital during the first 60 to 90 days</p> <p>11 of 2002 than previously anticipated; correct?</p> <p>12 MS. ORME: Fifth.</p> <p>13 Q. (By Ms. Steingart) This also was</p> <p>14 reflected in the MFIR for December 2001, wasn't it?</p> <p>15 MS. ORME: Fifth.</p> <p>16 Q. (By Ms. Steingart) Now, turning back</p> <p>17 to 10-Q for the first quarter of 2002, NorthWestern</p> <p>18 did not disclose in this report that it had advanced a</p> <p>19 substantial amount of money to Expanets during 2002,</p> <p>20 did it?</p> <p>21 MS. ORME: Fifth.</p> <p>22 Q. (By Ms. Steingart) By the date of the</p> <p>23 first quarter 2002, you were aware that NorthWestern</p> <p>24 has advanced over \$145 million to Expanets, but this</p> <p>25 was not included in the 10-Q, was it?</p>	<p>24</p> <p>1 amount to be \$900 million, didn't it?</p> <p>2 MS. ORME: Fifth.</p> <p>3 Q. (By Ms. Steingart) And NorthWestern's</p> <p>4 consolidated figures that were initially misstated</p> <p>5 included inaccurate results for Expanets for each of</p> <p>6 the quarters of 2002?</p> <p>7 MS. ORME: Fifth.</p> <p>8 Q. (By Ms. Steingart) In the 2002 10-K,</p> <p>9 there was a disclosure that NorthWestern's nonenergy</p> <p>10 businesses had experienced disappointing results for a</p> <p>11 period of three years; correct?</p> <p>12 MS. ORME: Fifth.</p> <p>13 Q. (By Ms. Steingart) And that is</p> <p>14 essentially for the duration of those investments;</p> <p>15 right?</p> <p>16 MS. ORME: Fifth.</p> <p>17 Q. (By Ms. Steingart) Indeed, the 10-Q</p> <p>18 says that, quote, our experience with our nonenergy</p> <p>19 businesses has been very disappointing. They have</p> <p>20 adversely impacted our overall results of operations,</p> <p>21 financial condition, and liquidity for three years;</p> <p>22 right?</p> <p>23 MS. ORME: Fifth.</p> <p>24 Q. (By Ms. Steingart) Indeed, all of</p> <p>25 these operations in each of those three years were a</p>

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<p style="text-align: right;">25</p> <p>1 substantial drain on NorthWestern's liquidity; 2 correct? 3 MS. ORME: Fifth. 4 Q. (By Ms. Steingart) And NorthWestern 5 knew during every quarter in 2002 that the nonenergy 6 subsidiaries were complete failures, didn't it? 7 A. Fifth. 8 Q. Indeed, it wasn't just suddenly at the 9 end of 2002 that the substantial failure of these 10 businesses was known to NorthWestern; correct? 11 MS. ORME: Fifth. 12 Q. (By Ms. Steingart) Expanets' failure 13 was attributed to, among other things, the 14 deterioration of business in telecommunications 15 markets; correct? 16 MS. ORME: Fifth. 17 Q. (By Ms. Steingart) But this was 18 something that persisted all during the period of 19 NorthWestern's ownership of that; correct? 20 MS. ORME: Fifth. 21 Q. (By Ms. Steingart) Indeed, the amount 22 that NorthWestern carried on its financial statements 23 for good will in Expanets were incorrect all during 24 2002; isn't that right? 25 MS. ORME: Fifth.</p>	<p style="text-align: right;">27</p> <p>1 quarter of 2002, Blue Dot had a negative operating 2 income of \$3.7 million, which was \$1.2 million below 3 plan; correct? 4 MS. ORME: Fifth. 5 Q. (By Ms. Steingart) And by May 2002, 6 Blue Dot wasn't just underperforming; it was harming 7 the perceived value of NorthWestern in the eyes of 8 financial analysts; isn't that right? 9 MS. ORME: Fifth. 10 Q. (By Ms. Steingart) The analysts did 11 not understand how Blue Dot fit into company strategy 12 and saw it as a dead weight; right? 13 MS. ORME: Fifth. 14 Q. (By Ms. Steingart) All during 2002, 15 you were aware that Blue Dot actually had zero value; 16 isn't that right? 17 MS. ORME: Fifth. 18 Q. (By Ms. Steingart) And you knew that 19 Blue Dot had no value before NorthWestern released the 20 10-Q before the second quarter of 2002; right? 21 MS. ORME: Fifth. 22 Q. (By Ms. Steingart) Yet even though 23 Blue Dot had no value for the second quarter of 2002, 24 the company allocated losses of over \$8 million to. 25 Blue Dot common stock; isn't that right?</p>
<p style="text-align: right;">26</p> <p>1 Q. (By Ms. Steingart) And the good will 2 associated with Expanets, you know, should have been 3 completely brought to zero prior to the end of 2002; 4 isn't that right? 5 MS. ORME: Fifth. 6 Q. (By Ms. Steingart) Blue Dot was 7 another underperforming business at NorthWestern, 8 wasn't it? 9 MS. ORME: Fifth. 10 Q. (By Ms. Steingart) Prior to 11 September -- strike that. In September of 2001, Blue 12 Dot's performance was well below the original plan, 13 wasn't it? 14 MS. ORME: Fifth. 15 Q. (By Ms. Steingart) In that month, the 16 revenues were \$33 million, and more than \$10 million 17 below the planned number; correct? 18 MS. ORME: Fifth. 19 Q. (By Ms. Steingart) And the net income 20 was a negative \$670,000; correct? 21 MS. ORME: Fifth. 22 Q. (By Ms. Steingart) Blue Dot's 23 performance did not improve in 2002; right? 24 MS. ORME: Fifth. 25 Q. (By Ms. Steingart) During the first</p>	<p style="text-align: right;">28</p> <p>1 MS. ORME: Fifth. 2 Q. (By Ms. Steingart) This resulted in a 3 material misstatement in NorthWestern's public filing, 4 didn't it? 5 MS. ORME: Fifth. 6 Q. (By Ms. Steingart) I'd like to turn 7 your attention to the Montana Power acquisition and 8 subsequent going-flat transaction. On November 15, 9 2002, you were aware that NorthWestern was 10 transferring substantially all of the assets of 11 Montana Power, which had been renamed NorthWestern 12 Energy, LLC, to itself; correct? 13 MS. ORME: Fifth. 14 Q. (By Ms. Steingart) And you were also 15 aware that the assets transferred to NorthWestern by 16 Montana Power were worth in excess of \$1 billion and 17 between \$1 billion and \$1.4 billion; correct? 18 MS. ORME: Fifth. 19 Q. (By Ms. Steingart) Yet Montana Power, 20 which was renamed, as we said before, NorthWestern 21 Energy, received no cash for that transfer, did it? 22 MS. ORME: Fifth. 23 Q. (By Ms. Steingart) The only 24 consideration that NorthWestern Energy, LLC, received 25 from NorthWestern in connection with the transfer was</p>

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1 the assumption by NorthWestern of approximately 700 in
2 liabilities, including liability to the Quips;
3 correct?
4 MS. ORME: Fifth.
5 Q. (By Ms. Steingart) So the assets
6 transferred far -- the value of the assets transferred
7 far exceeded the value of the liabilities assumed in
8 connection with the going-flat transaction; isn't that
9 right?
10 MS. ORME: Fifth.
11 Q. (By Ms. Steingart) There was one asset
12 that was left at NorthWestern Energy, LLC, wasn't
13 there?
14 MS. ORME: Fifth.
15 Q. (By Ms. Steingart) And that asset was
16 the Milltown Dam. Do you recall?
17 MS. ORME: Fifth.
18 Q. (By Ms. Steingart) The Milltown Dam
19 had various environmental liabilities and operating
20 costs but generated no revenue; isn't that right?
21 MS. ORME: Fifth.
22 Q. (By Ms. Steingart) As a result of the
23 transfer of assets to NorthWestern and the retention
24 of the Milltown Dam by NorthWestern Energy, LLC,
25 NorthWestern Energy, LLC, was rendered insolvent,

30

1 wasn't it?
2 MS. ORME: Fifth.
3 Q. (By Ms. Steingart) NorthWestern Energy
4 did not generate sufficient cash to meet the ongoing
5 expenses of the Milltown Dam after the going-flat
6 transaction, did it?
7 MS. ORME: Fifth.
8 Q. (By Ms. Steingart) And NorthWestern
9 Energy, LLC, did not generate sufficient cash after
10 the going-flat transaction to pay on its joint and
11 several liability on the Quips, did it?
12 A. Fifth.
13 Q. Now, at the time that NorthWestern --
14 (Mr. Steingart enters the deposition.)
15 MS. STEINGART: We'll stop for a
16 minute. Joe is entering the room.
17 (A discussion was held off the record.)
18 MS. STEINGART: Nancy, Joe has arrived.
19 Nancy?
20 MR. PIZURRO: Hello?
21 MS. DELANEY: Yes, I'm here.
22 MS. STEINGART: We just wanted you to
23 know that.
24 MS. DELANEY: I'm going to hang up
25 then.

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1 MS. STEINGART: Well, you can stay on.
2 MS. DELANEY: Thank you all.
3 MS. STEINGART: You're welcome.
4 (Ms. Delaney hangs up, leaving the
5 deposition.)
6 Q. (By Ms. Steingart) Now, at the time
7 that NorthWestern assumed the liability of the Quips
8 in connection with the going-flat transaction, you
9 knew that NorthWestern did not have the financial
10 ability to pay those liabilities; correct?
11 MS. ORME: Fifth.
12 Q. (By Ms. Steingart) And had
13 NorthWestern's true financial condition in November of
14 2002 been known, the going-flat transaction would not
15 have been able to go forward; isn't that right?
16 MS. ORME: Fifth.
17 Q. (By Ms. Steingart) Indeed,
18 NorthWestern fraudulently concealed its true financial
19 condition in order to be able to effectuate the
20 going-flat transaction, didn't it?
21 MS. ORME: Fifth.
22 Q. (By Ms. Steingart) NorthWestern
23 fraudulently concealed its true financial condition in
24 the first 10-Q for 2002, didn't it?
25 MS. ORME: Fifth.

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1 Q. (By Ms. Steingart) NorthWestern
2 fraudulently concealed its true financial condition in
3 its second quarter 10-Q filed with the SEC; correct?
4 MS. ORME: Fifth.
5 Q. (By Ms. Steingart) If NorthWestern's
6 true financial condition had been known during the
7 first and second quarter of 2002, the credit agencies
8 would have downgraded NorthWestern's stat, wouldn't
9 they?
10 MS. ORME: Fifth.
11 Q. (By Ms. Steingart) There would have
12 been no equity offering by NorthWestern during that
13 period; isn't that right?
14 MS. ORME: Fifth.
15 Q. (By Ms. Steingart) If NorthWestern had
16 made the \$900 million aggregate adjustment to its
17 first three 10-Qs that were required -- that it was
18 required to make later on, the going-flat transaction
19 would never have occurred; isn't that right?
20 MS. ORME: Fifth.
21 Q. (By Ms. Steingart) Now, I'd like to
22 ask you a few questions about your compensation as CFO
23 of NorthWestern. In connection with your employment
24 as CFO of NorthWestern, you had an employment
25 agreement, which was filed as part of an 8-K in

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<p>33</p> <p>1 December of 2001; correct?</p> <p>2 MS. ORME: Fifth.</p> <p>3 Q. (By Ms. Steingart) And your</p> <p>4 compensation included a base salary of \$230,000 a</p> <p>5 year; correct?</p> <p>6 MS. ORME: Fifth.</p> <p>7 Q. (By Ms. Steingart) And your</p> <p>8 compensation included a short-term performance bonus</p> <p>9 that amounted to 81.3 percent of your annual base</p> <p>10 salary; correct?</p> <p>11 MS. ORME: Fifth.</p> <p>12 Q. (By Ms. Steingart) And that was</p> <p>13 payable only if NorthWestern achieved specific target</p> <p>14 performance; correct?</p> <p>15 MS. ORME: Fifth.</p> <p>16 Q. (By Ms. Steingart) And your</p> <p>17 compensation also included a long-term equity plan,</p> <p>18 which would involve a -- Strike that.</p> <p>19 And your compensation also included a</p> <p>20 long-term equity plan, which included a grant of</p> <p>21 29,000 shares worth around \$200,000; correct?</p> <p>22 MS. ORME: Fifth.</p> <p>23 Q. (By Ms. Steingart) And it included a</p> <p>24 long-term incentive performance plan that would have</p> <p>25 been 28.3 percent of your annual base salary; correct?</p>	<p>35</p> <p>1 Q. (By Ms. Steingart) NorthWestern</p> <p>2 overstated its income from continuing operations</p> <p>3 during the first quarter of 2002 by approximately 176</p> <p>4 percent; correct?</p> <p>5 MS. ORME: Fifth.</p> <p>6 Q. (By Ms. Steingart) NorthWestern</p> <p>7 overstated its income from continuing operations</p> <p>8 during the second quarter of 2002 by 618 percent;</p> <p>9 correct?</p> <p>10 MS. ORME: Fifth.</p> <p>11 Q. (By Ms. Steingart) And NorthWestern</p> <p>12 restated its income from operations for the third</p> <p>13 quarter of 2002 by 109 percent; right?</p> <p>14 MS. ORME: Fifth.</p> <p>15 Q. (By Ms. Steingart) The misstatements</p> <p>16 during this period were caused by the company's</p> <p>17 improper accounting for accounts receivable,</p> <p>18 adjustments to companies' bills, and allocations of</p> <p>19 losses to minority interests; correct?</p> <p>20 MS. ORME: Fifth.</p> <p>21 Q. (By Ms. Steingart) NorthWestern also</p> <p>22 misrepresented or did not disclose the effects of</p> <p>23 significant problems with Expanets' new business</p> <p>24 technology information system; right?</p> <p>25 MS. ORME: Fifth.</p>
<p>34</p> <p>1 MS. ORME: Fifth.</p> <p>2 Q. (By Ms. Steingart) But, again, you</p> <p>3 would only earn those compensations if NorthWestern</p> <p>4 achieved a specific target performance; correct?</p> <p>5 MS. ORME: Fifth.</p> <p>6 Q. (By Ms. Steingart) You, therefore,</p> <p>7 were in a position to receive substantial compensation</p> <p>8 in addition to your base salary if NorthWestern and</p> <p>9 its subsidiaries achieved various performance</p> <p>10 benchmarks; correct?</p> <p>11 MS. ORME: Fifth.</p> <p>12 Q. (By Ms. Steingart) Now, it's true,</p> <p>13 isn't it, that NorthWestern filed quarterly and</p> <p>14 current reports with the Securities and Exchange</p> <p>15 Commission during the first three quarters of 2002</p> <p>16 that materially misstated NorthWestern's financial</p> <p>17 position?</p> <p>18 MS. ORME: Fifth.</p> <p>19 Q. (By Ms. Steingart) It's also true that</p> <p>20 during the first three quarters of 2002 NorthWestern</p> <p>21 filed quarterly reports with the Securities and</p> <p>22 Exchange Commission that misrepresented or did not</p> <p>23 disclose required information about its nonutility</p> <p>24 businesses, Expanets and Blue Dot; correct?</p> <p>25 MS. ORME: Fifth.</p>	<p>36</p> <p>1 Q. (By Ms. Steingart) During this period,</p> <p>2 NorthWestern also failed to disclose the material</p> <p>3 impact of Expanets' reserve reduction and -- reserve</p> <p>4 reductions and its receipt of noncompete payments on</p> <p>5 Expanets' income; correct?</p> <p>6 MS. ORME: Fifth.</p> <p>7 Q. (By Ms. Steingart) And during the</p> <p>8 period that this false reporting occurred, you were</p> <p>9 the CFO; correct?</p> <p>10 MS. ORME: Fifth.</p> <p>11 Q. (By Ms. Steingart) And you signed each</p> <p>12 of the 10-Qs and 10-Ks that were filed; correct?</p> <p>13 MS. ORME: Fifth.</p> <p>14 Q. (By Ms. Steingart) Now, during the</p> <p>15 period that you were CFO in 2002, NorthWestern,</p> <p>16 through its financial misstatements,</p> <p>17 misrepresentations, and omissions, obscured the</p> <p>18 continuing poor performance of its subsidiaries at a</p> <p>19 time when it was publicly relying on its subsidiaries'</p> <p>20 operations to strengthen its financial condition;</p> <p>21 right?</p> <p>22 MS. ORME: Fifth.</p> <p>23 Q. (By Ms. Steingart) Now, the 10-Qs and</p> <p>24 the 10-K that we've just been discussing were the</p> <p>25 financial statements that were used in connection with</p>

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EXHIBITS 11 - 14

REDACTED IN THEIR ENTIRETY